

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

B
Pages

74-1378

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

—against—

VINCENT GUGLIARO,
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX



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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT
JUDGE WYATT

73 CRIM. 513

THE UNITED STATES

Attorneys for U.S.: 264-6596

vs.

John R. Wing, AUSA

VINCENT GUGLIARO

Statistical Record

Costs

J.S.2 mailed

Clerk

J.S.3 mailed

Marshal

Violation

Docket fee

Title 18

Sec. 1623 Perjury

SEVEN COUNTS

Date

Proceedings

5-31-73	Filed indictment - B/W ordered - Cannella, J.
6-1-73	Filed appearance bond #23060 in the sum of \$500.00 dtd. 6/1/73.
6-11-73	Deft. (Atty. present) pleads not guilty. Bail continued at \$500.00. Case assigned to Judge Wyatt. Palmieri, J.
6-20-73	Pre-Trial conference held-Trial set for Sept. 10, 1973. Wyatt, J.
7-2-73	Vincent Gugliaro. Filed notice of appearance by Evseroff, Newman & Sonnenshine, 186 Joralemon St., Brooklyn, New York 11201, UL-5-1111.
8-7-73	Filed defts. notice of motion, affdvt. and exhibits.
8-7-73	Filed defts. memo.
3-21-73	Filed Govt. memo in opposition to deft. motion to dismiss indictment.
9-4-73	Filed deft's reply memorandum to Gov't memorandum in opposition to motion to dismiss.

<u>Date</u>	<u>Proceedings</u>
9-4-73	Filed memo endorsed on motion filed 8-7-73 to dismiss-- Motion denied in all respects....J. Wyatt mailed notices.
10-3-73	Pre-Trial Conference held - Wyatt, J.
12-13-73	Filed deft's affdvt & notice of motion for a continuance.
12-13-73	Filed memo endorsed on motion filed this date--The trial of this indictment having been set for January 14, 1973, the within motion is denied as moot. So Ordered-Wyatt, J.
1-14-74	Filed Gov't Pre-Trial Memorandum: Evidence of Deft's Acquittals at the "Imperial I" and "Imperial II".
1-14-74	Filed Gov't Proposed Examination of Prospective Jurors.
1-12-74	Pre-Trial conference held--Wyatt, J.
1-14-74	Trial begun, with a Jury.
1-15-74	Trial cont'd.
1-16-74	Trial cont'd.
1-17-74	Trial cont'd.
1-18-74	Trial cont'd. Summations and Charge. Jury deliberating. Verdict NOT GUILTY on each of Cts. 1,2,3,5,6, &7. GUILTY on Ct.#4. Pre-sent. investigation ordered. Sentence March 1, 1974 at 2:30 pm - Room 705. Bail cont'd.-- Wyatt, J.
1-21-74	Filed Deft's Request to Charge.
1-21-74	Filed Gov't's Requests to Charge.
2-15-74	Filed deft's affdvt & notice of motion to set aside verdict.
3-1-74	Filed Memo Endorsed on Deft's Notice of Motion to set aside verdict. After hearing open Court, the within MOTION is denied. SO ORDERED -- Wyatt, J. (Mailed Notice).
3-1-74	Filed plttf's affdvt and memorandum in opposition to Deft's Rule 33 Motion, for a new Trial.

DateProceedings

- 3-1-74 Filed Judgment & Commitment - It is adjudged that the Deft is hereby committed to the custody of the Atty General for imprisonment for a period of TWO (2) YEARS, on CT. 4, pursuant to Title 18, Section 3651, U.S. Code, on condition the Deft. be confined in a jail or treatment type institution for THREE (3) MONTHS, the remainder of the sentence of imprisonment is suspended and the Deft. is placed on Probation for a period of TWO (2) YEARS, subject to the standing probation order of this court, AND FINED \$3,000.00. Deft. is to stand committed until the fine is paid or he is otherwise discharged according to law. Fine is stayed pending appeal. Deft is cont'd on bail pending appeal -- WYATT, J.
- 3-5-74 Filed Deft's Notice of Appeal.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

-v-

VINCENT GUGLIARO,

Defendant.

INDICTMENT

73 Cr.

-----x
COUNT FOUR

The Grand Jury further charges:

1. On or about the 13th day of December, 1971, in the Southern District of New York, VINCENT GUGLIARO, the defendant, having duly taken an oath that he would testify truly, before a competent tribunal, to wit, the United States District Court for the Southern District of New York, in a case in which a law of the United States authorizes an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.
2. At the time and place aforesaid, said Court was conducting the trial of a criminal case entitled United States of America v. Vincent Gugliaro, Ronald Alpert, Bernard Weiss, Michael Hellerman, Murray Taylor, et al., Indictment No. 70 CR 967, in which indictment VINCENT GUGLIARO, the defendant, was charged with violations of the federal securities laws, the mail fraud statute and the conspiracy statute, under Title 15, United States Code, Section 78j(b) and Title 18, United States Code, Sections 1341 and 371.
3. It was material to said trial to ascertain whether the defendant VINCENT GUGLIARO had ever been in the Potpourri

restaurant in Brooklyn, New York, owned in part by Ronald Alpert and Bernard Weiss, and whether the defendant VINCENT GUGLIARO had ever seen Bernard Weiss in the Potpourri restaurant.

4. At the time and place aforesaid VINCENT GUGLIARO, the defendant, appearing as a witness in his own behalf before said Court, testified falsely under oath before said Court with respect to the aforesaid material matter as follows:

Q Did you ever see him (Weiss) in the Potpourri restaurant?

A No, sir.

Q Were you ever in that restaurant, Mr. Gugliaro?

A No.

5. The aforesaid testimony of the defendant VINCENT GUGLIARO, as he then and there well knew, was untrue in that the defendant was in the Potpourri restaurant and had seen Bernard Weiss in that restaurant on more than one occasion.

(Title 18, United States Code, Section 1623).

Foreman

WHITNEY NORTH SEYMOUR, JR.
United States Attorney

1 gta

Weiss-direct

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2 A Yes, we did.

3 Q And would you tell us how that occurred?

4 A Ronnie said that he wasn't sure of these
5 people paying their end of the profits --

6 MR. NEWMAN: Your Honor, I object to this.
7 I know that we have just started. May I respectfully
8 call for a side bar, please?

9 THE COURT: Suppose we let the jury go to
10 lunch a little early today, Mr. Newman, and then
11 I can hear you and Miss Neiman on the questions of law
12 that you want to raise.

13 MR. NEWMAN: Yes, sir.

14 THE COURT: I have already told the jury why
15 we discuss these questions of law out of the presence
16 of the jury.

17 Members of the jury, suppose that you be
18 excused until 2 o'clock. By that time we may have been
19 able to solve all these problems of law. All right,
20 we will resume at 2 o'clock.

21 (The jury left the courtroom.)

22 THE COURT: Mr. Weiss, you may be excused
23 until 2 o'clock too.

24 (Witness temporarily excused.)

25 THE COURT: Mr. Newman, before we get to this

A-6

1 gta

Weiss-direct

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2 last point, I said I would give you a chance to make a
3 motion out of the hearing of the jury, apparently
4 based on something that Miss Neiman said in her opening.

5 MR. NEWMAN: Yes.

6 If your Honor please, I would respectfully
7 ask for the withdrawal of a juror and the declaration of
8 a mistrial based on the opening. I think despite your
9 Honor's careful admonitions and despite the colloquy we
10 had preceding the selection of the jury, Miss Neiman, in
11 her opening, repeated each and every one of the elements
12 of the Imperial trial.

13 Now, of course, some time has gone by since
14 her opening, Judge, and I can't give you specific
15 instances, but I think if you look at the minutes of
16 that opening, Judge, it repeated each and every element
17 of that Imperial trial, and I know I needn't burden your
18 Honor with the fact that this defendant was acquitted
19 twice of the charges involved.

20 Your Honor saw fit to deny my motion for
21 collateral estoppel, but it seems to me the trial had to
22 have some import, Judge, and, in effect, her opening just
23 repeated Imperial despite your Honor's admonition.
24 I feel, most respectfully, Vincent Gugliaro is on trial
25 for the third time for the Imperial Investment manipula-

A-7

1 gta

Weiss-direct

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2 tion.

3 That is in so far as my notion during the open-
4 ing.

5 THE COURT: Wait a minute. I think as to
6 that, I am going to take occasion to tell the jury again
7 that he isn't on trial for stock manipulation or any-
8 thing of that sort.

9 MR. NEWMAN: All right, sir. I respectfully
10 except to that. I don't think that remedy cures it
11 all.

12 THE COURT: All right. It probably, though,
13 is better than nothing.

14 MR. NEWMAN: I would trust that the
15 record wouldn't reveal my silence as being acquiescence
16 that it is better than nothing.

17 THE COURT: Of course.

18 Then during the testimony that Miss Neiman
19 was eliciting, it was the question of Mr. Weiss was at
20 the Potpourri and he was at the meeting with others, and
21 she was asking him what he was told.

22 MR. NEWMAN: That is correct.

23 Judge, if I understood the testimony cor-
24 rectly, and if I am wrong stop me, Gugliaro is not
25 alleged to have been at that particular meeting, and the

A-8

1 gta

Weiss-direct

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2 discussion, again, went into the manipulation of the
3 Imperial Investment stock and then to compound it
4 there is a discussion later on that night, as I understand
5 the testimony, because Miss Neiman and the witness were
6 both going rather rapidly, but as I understand the im-
7 port of the subsequent testimony where I asked for the
8 side bar, so to speak, to raise the legal issue is a con-
9 versation between Alpert and Weiss again concerning
10 Imperial, and again concerning why allegedly Alpert
11 didn't want to go into that deal.

12 Judge, I respectfully submit that the only
13 basis of admissibility of such a conversation in the
14 absence of my client would be if there were a conspiracy
15 charge here, and that is the conspiracy charge of which
16 he was acquitted. If collateral estoppel has any
17 meaning, Judge, I think we are going back into a retrial,
18 if we haven't already gone and embarked on another retrial
19 of Imperial.

20 Now, if this is the format I respectfully submit
21 that to allow this jury to sit and, if you will pardon
22 my word, not ignorant, but in ignorance of the ultimate
23 disposition of the charges against Mr. Gugliaro is
24 eminently unfair and deprives him of a fair trial because
25 we are relitigating it.

A-9

1 gta

Weiss-direct

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2 I respectfully submit that I am being left with
3 the only option of ignoring my client's Fifth Amendment
4 right and put him on the stand if for no other reason than
5 to say he has never been convicted of a crime. I think
6 it flies in the face of my Fifth Amendment rights, it
7 creates an erroneous impression, it deprives my client
8 of getting the true facts before the jury and it
9 leaves my client in no position to get a fair trial,
10 Judge, and I think it is eminently, eminently unfair in
11 the nature of the questions that have been elicited from
12 this witness.

13 THE COURT: Mr. Newman, I think you have a
14 point in saying that we shouldn't go into all the details
15 of the Imperial trial because we are not litigating those
16 issues, and I wonder myself, Miss Neiman, if I really
17 should not sustain Mr. Newman's objection to what was said
18 by each person at this meeting where Mr. Gugliaro was
19 not present.

20 For example, so far as the charges in this
21 indictment are concerned, it does not seem to me it makes
22 any difference what they said. You have brought out
23 that they talked about Imperial stock. Now, beyond that
24 I really don't see much relevance to it.

25 MISS NEIMAN: Your Honor, this is the first

A-10

1 gta
2 Weiss-direct
3 64
4 meeting about Imperial at which Mr. Alpert and Weiss attended
5 and this is offered -- the government submitted a memor-
6 andum on that -- solely by way of background to indi-
7 cate how they got involved in Imperial. From here on
8 in, indeed, Mr. Weiss will be testifying to conversation
9 at which Mr. Cugliaro was present, and this is done by
10 way of background to show how it is that Mr. Cugliaro got
11 involved and what brought him to the Imperial situa-
12 tion and also what brought Mr. Weiss and Mr. Alpert to
13 the Imperial situation. This is the only meeting which
14 the government plans to elicit by way of background facts.

15 THE COURT: I think you have gotten already
16 enough background and I think as to what was said by
17 each person at that meeting I will sustain Mr. Newman's
18 objection.

19 MISS NEIMAN: Very well, your Honor, I will
20 proceed without that.

21 THE COURT: Very well. We will go on.
22 I think you got enough about this meeting and we will go
23 on from that point when we resume at 2 o'clock.

24 MISS NEIMAN: Very well.

25 THE COURT: Miss Neiman, which is the memor-
 andum that you submitted which has to deal or which
 deals with this particular point?

MISS NEIMAN: Your Honor, it is the government's memorandum of law, conversation with witness of third party, not hearsay of third party also called as witness, in that there are two separate grounds under Manfredonia. One is background facts offered not for the truth of what was said and the other ground is both parties or more than one party will be called as a witness and therefore there is no hearsay problem.

The government is essentially relying on the background fact aspect of that.

THE COURT: All right. I think as to this meeting at which Gugliaro was not present we have enough background, but I will read with interest this memorandum during the luncheon recess.

MISS NEIMAN: Thank you, your Honor.

THE COURT: All right. Let us start in again at 2 o'clock.

Mr. Newman, I will let you off at 4 o'clock today.

MR. NEWMAN: Thank you, sir.

THE COURT: I may not be able to do it again.

(Luncheon recess.)

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AFTERNOON SESSION

2.00 P.M.

BERNARD WEISS, resumed.

THE COURT: Mr. Foreman and members of the jury, when we were about to take our luncheon recess Mr. Newman had objected to conversations between this witness and others not including the defendant Gugliaro at The Potpourri Restaurant about the manipulation of Imperial Investment stock.

I have concluded to sustain that objection on the ground that the details of the conversation, the defendant Gugliaro not claimed to be present, are irrelevant.

The defendant here is not being tried for stock manipulation, I have already emphasized, and while some evidence as to background of the December, 1971, trial is relevant, and evidence as to the charges at that trial serve as background, the witness had already given such background evidence, and the issue here being whether the defendant Gugliaro testified falsely at the December, 1971, trial, I have concluded to sustain this objection.

Let us go on.

MISS NEIMAN: Thank you.

DIRECT EXAMINATION CONTINUED

BY MISS NEIMAN:

Q Mr. Weiss, did there come a time when Mr.

1 gta6

Weiss-direct

SS

2 1971?

3 A Yes, I was.

4 Q After he testified did you have a conversation
5 with him about his testimony?

6 A Yes.

7 MR. NEWMAN: I am going to object to this and
8 ask for a side bar, Judge.

9 THE COURT: Well, I will see you now at the
10 side bar.

11 (At the side bar.)

12 MISS NEIMAN: What the government plans to
13 elicit, your Honor, is that Mr. Gugliaro told Mr. Weiss
14 if the government ever found witnesses to place in the
15 Potpourri he would say that he was mistaken, he thought
16 it was Chez Joey and that the sign was changed and
17 that's why he testified that he had never been in the
18 Potpourri. This, of course, is one of the counts of
19 the perjury which he is charged with.

20 THE COURT: What is the objection, Mr. Newman?

21 MR. NEWMAN: Well, the first question --

22 THE COURT: It is a statement by the defend-
23 ant, I presume.

24 MR. NEWMAN: Yes. The first question I
25 would like to know is when Mr. Weiss started to cooperate

A-14

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1 gta7

Weiss-direct

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2 with the government.

3 MISS NEIMAN: I will be getting to that.
4 I don't think it is relevant to this question.

5 MR. NEWMAN: It may very well be at the
6 point of the trial he was cooperating. We may have
7 a Sixth Amendment question. We may have a question of
8 infiltration of the defense which may entitle us to a
9 hearing outside of the jury's presence.

10 THE COURT: This was before the indictment
11 was charged.

12 MISS NEIMAN: No, this is after Mr. Gugliaro
13 testified as a witness during the course of the Imperial
14 proceedings.

15 THE COURT: Imperial 1?

16 MISS NEIMAN: Yes, Imperial 1 trial.

17 THE COURT: Yes. But that is before the in-
18 dictment in the case here on trial.

19 MISS NEIMAN: Yes.

20 THE COURT: It would seem to me that is per-
21 fectly all right. I will overrule the objection.

22 MR. NEWMAN: Okay.

23 (In open court.)

24 BY MISS NEIMAN:

25 Q Mr. Weiss, again directing your attention
to the conversation you had with Mr. Gugliaro after he

1 testified as a witness in the Imperial trial, would you
2 tell us what he said to you about his name?

3 A He said that it's possible that the government
4 could find some witnesses that could place him in the
5 Potpourri, but that he would say that the sign on the
6 Potpourri restaurant at that time was still Chez Joey.

7 Q And was the Potpourri called Chez Joey when
8 you purchased it?

9 A Yes.

10 Q And did you have the Chez Joey sign hanging
11 up there for a while on the restaurant?

12 A Yes.

13 Q And approximately when did you get the Pot-
14 pourri sign?

15 A About three months after we opened up the
16 restaurant.

17 THE COURT: When does that place it? When
18 did it open up?

19 THE WITNESS: 1969.

20 THE COURT: About what time in 1969?

21 THE WITNESS: It opened up just before the
22 summer of 1969 and the sign was there maybe in October.

23 THE COURT: You mean the sign Potpourri?

24 THE WITNESS: Potpourri was put up.
25

A-16

1 gta

Weiss-direct

91

2 THE COURT: In October of 1969?

3 THE WITNESS: I would say. I would say
4 right around that period.

5 THE COURT: So between October, 1969 and the
6 closing in the summer of 1970, the sign said Potpourri?

7 THE WITNESS: Yes, sir.

8 THE COURT: All right.

9 BY MISS NEUMAN:

10 Q Mr. Weiss, at the Imperial trial you testified
11 in your own behalf as a defendant, didn't you?

12 A Yes, I did.

13 Q And you denied any involvement in a scheme to
14 manipulate the Imperial stock, did you not?

15 A Yes, I did.

16 Q And that was a lie, wasn't it?

17 A It was.

18 Q And did you also testify that you had only
19 met Vincent Gugliaro in connection with his purchase of
20 lamps from his store, that you may have seen him once or
21 twice in restaurants?

22 A Yes, I did.

23 Q And was that a lie?

24 A Yes, it was.

25 Q Mr. Weiss, when did you begin cooperating

A-17

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1 gta

Weiss-direct

22

2 with the United States Attorney's office?

3 A October of 1972.

4 Q From that time on have you seen or spoken to
5 Ronnie Alpert? Have you had a conversation with Ronnie
6 Alpert?

7 A No.

8 Q When was the last time that you had a conversa-
9 tion with Mr. Alpert?

10 A Before the second Imperial trial. I don't
11 remember the exact date.

12 Q Would that be some time around May of 1972?

13 A I think so.

14 Q When was the last time you had a conversation
15 with Michael Hellerman other than hello and goodbye?

16 A Since the trial? I beg your pardon?

17 Q When was the last time that you had a conver-
18 sation with Michael Hellerman other than to say hello and
19 goodbye?

20 A The first Imperial trial.

21 THE COURT: That was December, 1971?

22 THE WITNESS: Yes.

23 Q When was the last time other than saying
24 hello and goodbye that you had a conversation with Murray
25 Taylor?

A-18

1 gta

99

2 in connection with the sentence and then the sentence of
3 Mr. Weiss.

4 Mr. Weiss indicated what his understanding
5 was, that the government would state that he cooperated
6 and has never seen these letters and the government
7 would prefer that because they are, in essence, irrele-
8 vant, they be submitted to the court only.

9 THE COURT: Do you claim that they are not
10 3500 material?

11 MISS NEIMAN: Yes, your Honor, they are not
12 3500 material, but to the extent --

13 THE COURT: And you really want me to give
14 you a ruling that they are not 3500 material?

15 MISS NEIMAN: Yes, your Honor, and that
16 they are not Brady because of what the government
17 brought out through Mr. Weiss already.

18 THE COURT: All right. I will look at them.

19 I have some doubt as to whether it is my respon-
20 sibility, really, to pass on this, but I notice that a
21 lot of judges do it.

22 I usually say that the decision on Brady is
23 a matter for the United States attorney and not for me,
24 but as to whether it is 3500 material, I will take a
25 look at it.

MISS NEIMAN: Thank you, your Honor.
These are marked Government's Exhibits 3501C, 3501D and
3501E.

THE COURT: C seems to be addressed to
Judge Lasker.

D is addressed to Judge Lasker.

E is addressed to Judge Brieant.

MISS NEIMAN: That's correct, your Honor.

THE COURT: All right. And you are repre-
senting that Mr. Weiss has never seen these communica-
tions, doesn't know anything about their contents?

MISS NEIMAN: That's correct. He simply
knows the government did make a statement on his behalf
to each of these judges about his cooperation.

THE COURT: All right. What 3500 material
as to Weiss has been turned over to the defense?

MISS NEIMAN: I am going to turn over to
Mr. Newman 3501A, which is the rap sheet of Mr. Weiss,
3501B, which includes motion to reduce before Judge
Lasker, Judge Lasker's endorsement of that motion,
and the reduced judgment of conviction, the amended
judgment of conviction. I do not have the first judg-
ment of conviction. It was March 8, 1972 and the
sentence was eight months.

p15

Weiss-cross

MR. NEWMAN: Will your Honor bear with me for a minute?

THE COURT: Of course.

(Mr. Newman examines.)

Q Now, when was it that you first decided to cooperate with the government, Mr. Weiss?

A I started to discuss with the U.S. Attorney September of 1972.

Q I am sorry, did you say December of 1972?

THE COURT: September.

A September.

Q September?

A Right.

Q And at that point, so I understand you correctly, you had been convicted of the Imperial manipulation, you were sentenced to eight months?

A Yes, sir.

Q During the course of the discussion in September of 1972 did you inquire whether you could get some help from the government to get that sentence cut?

A I am just trying to think -- yes, sir.

Q And at that point in September of 1972 you were already indicted in Lanai --

A Excuse me --

A-21

kp5

Weiss-cross

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2
3 "A I heard Taylor say a lot of things."

4 Was that question asked you and did you make that
5 answer?

6 A Yes.

7 Q And was it intended by your answer, Mr. Weiss,
8 to indicate to that jury that Mr. Taylor was not telling the
9 truth when he said that?

10 MISS NEIMAN: Objection.

11 THE COURT: Sustained.

12 Q Now, Mr. Weiss, I have read a lot of questions
13 and answers that you made in connection with the first
14 Imperial trial, do you remember?

15 A Yes.

16 Q And you have told me here that your answers to
17 those questions were untrue.

18 THE COURT: No, I think this is just repetition.

19 MR. NEWMAN: This is just introductory, Judge.

20 THE COURT: All right, let us get on. Let us
21 get to the point.

22 Q Mr. Weiss, when did you decide to cooperate with
23 the government?

24 A I think I had my first meeting with the U.S.
25 Attorney October, 1972, I believe.

Q And you testified in the first Imperial trial in

A-22

1 kp6

Weiss-CROSE

2 December of 1971?

3 A Yes.

4 Q Between that time, between December of '71 and
5 October of '72 did you tell me, sir, your first meeting with
6 the government about cooperating?

7 A I believe it was October, 1972.

8 Q Between that period of time, sir, were you
9 indicted for perjury in the first Imperial trial?

10 A No, sir.

11 Q Now there came a time, did there not, that Mr.
12 Pennie Alpert began to cooperate with the government?

13 A Yes.

14 Q When was this, sir?

15 A I think it was some time in May of '71 or '72 --
16 I am just really not sure.

17 Q Was it in fact May of 1972, because in December
18 of 1971 he was on trial in the first Imperial?

19 A Yes.

20 Q It was May of 1972, isn't that a fact?

21 A Yes.

22 Q And Mr. Alpert and you had done everything
23 together in connection with Imperial, had you not?

24 A Correct.

25 Q And Mr. Alpert, could he not give the lie to

A-23

1 kp7

Weiss-cross

2 what you say was your lying testimony?

3 MISS NEIMAN: Objection, your Honor.

4 THE COURT: Sustained.

5 Q Between the period Mr. Alpert began to cooperate
6 as a government witness from December of '71 to May of 1972
7 were you indicted for perjury in connection with that?

8 A No, sir.

9 THE COURT: He has already answered that ques-
10 tion.

11 Q When you started to cooperate with the government
12 was that October, 1972, or did you just start talking with
13 them?

14 A I really couldn't give you a correct answer.
15 I don't remember.

16 Q Was it later in 1972 you began to cooperate?

17 A It could have been a month later or so.

18 Q So approximately October, November or December
19 of 1972, is that a fair statement?

20 A Correct.

21 Q And at that point do you tell us, sir, that you
22 related the true story to the United States Attorneys?

23 A Yes.

24 Q And between that time and today's date have you
25 been indicted for perjury?

kp30

Alpert-direct

Q As a result of your conversation with Mr. Bonadonna did you have a meeting about your expenses in connection with the trip to Florida?

A Yes.

Q And where did this meeting take place?

A At The Potpourri.

Q And will you tell us who were there?

A Vincent Gugliaro, Philip Bonadonna, myself, Bernard Weiss and Erwin Layne.

Q And will you identify Mr. Gugliaro, please?

MR. NEWMAN: Stipulated -- I am sorry, Judge, I did not get up -- I am sorry.

THE COURT: That is all right.

MR. NEWMAN: Stipulating the defendant.

THE COURT: Yes. Who is Mr. Gugliaro?

THE WITNESS: The gentleman sitting next to Mr. Newman.

THE COURT: To the right or left of the two men?

THE WITNESS: Facing my right.

THE COURT: All right, the identification has been made and is conceded.

MR. NEWMAN: It is not a hard comparison, Judge!

BY MISS NEIMAN:

Q How long before this meeting had you met Mr.

A-25

1 kp31 Alpart-direct

2 Gugliaro?

3 A A very short time -- maybe two weeks.

4 Q And where did you meet him?

5 A At The Potpourri.

6 Q And did anybody introduce you to him?

7 A I was introduced to him by Bernard Weiss and Phil
8 Bonadonna.

9 Q And by what name had you been introduced to him --
10 what was the name that he was introduced to you by, that is?

11 A Vinnie.

12 Q And had you seen Mr. Gugliaro before you were
13 actually introduced to him?

14 A Yes.

15 Q And where had you seen him?

16 A At The Potpourri.

17 Q Now going back to this meeting at The Potpourri
18 about the expenses, you mentioned that an Erwin Layne was
19 there. For how long had you known Erwin Layne?

20 A Approximately a year.

21 Q Who had introduced you to Erwin Layne?

22 A Bernard Weiss.

23 Q Now, Mr. Alpart, will you tell us, to the best
24 of your recollection, who said what at this meeting where
25 Mr. Gugliaro, Mr. Bonadonna, Mr. Weiss, you and Mr. Layne

A-26

1 qtal

Alpert-direct

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2 Q Incidentally, when Mr. Layne was at Mr.
3 Taylor's office, what was he doing?

4 A He was watching.

5 Q Mr. Alpert, did there come a time when you
6 wanted an advance or a loan of \$25,000?

7 A Yes.

8 Q And did you speak to Mr. Vincent Gugliaro
9 about that?

10 A Yes.

11 Q And where did you speak to him?

12 A I believe I spoke to him about it the first
13 time at the Potpourri restaurant one evening.

14 Q And do you remember around what time of the
15 year this was?

16 A I would -- to the best of my recollection,
17 I think it was around the middle of November.

18 Q And this is still 1969?

19 A Yes.

20 Q And would you tell us what you said to Mr.
21 Gugliaro and what he said to you?

22 A I asked Mr. Gugliaro if I could withdraw \$25,000
23 from the deal because I needed it to go into a real
24 estate transaction and it was getting close to the clos-
25 ing and I needed the money, you know, rapidly.

A-27

the 10,000 shares?

A Yes, I did.

Q And how long after your conversation at Mr. Taylor's office with Weiss, Layne and Bonadonna did that conversation take place?

A Either the same night or the next night.

Q And where was your conversation with Mr. Gugliaro?

A At the Potpourri.

Q And would you tell us who said what at that meeting?

A I did most of the talking and I told Mr. Gugliaro that the 10,000 shares were bought in the stock and the stock went up maybe a point or a point and a quarter and I couldn't understand it. Supposedly Murray Taylor owned all the stock. If I was put put 10,000 shares of buy-in in at any one time the stock could have moved 10 points, 20 points. I mean if nobody was selling the stock, there would be no limit where it could go. So somebody was selling the stock while I was buying it, and if that's the case, that's not the arrangement we had and I'd like to find out where the stock went to.

Q And what, if anything, were you told at that

you speak to Mr. Gugliaro about the conversation you had with Mr. LaRocca?

A I did.

Q And where did you speak to Mr. Gugliaro?

A At the Potpourri.

Q And will you tell us what you said to Mr. Gugliaro?

A I told Mr. Gugliaro that "There is no deal here, Taylor does not own the stock he said he did, he bought the stock but he never paid for it and the companies are selling him out and all the buying that we put into this deal is just going to be eaten up by the companies selling into us, Taylor doesn't own a share of the stock."

Q And what, if anything, did Mr. Gugliaro say to you?

A He said he was going to have a meeting with John and they are going to iron this thing out.

I told Mr. Gugliaro that I want to be at that meeting and Mr. Gugliaro said, "No, John won't have a meeting if you are there."

Then I said, "Well, let Bernie go there."

He said he wouldn't have a meeting with Bernie either.

1 I says, "It doesn't make sense your going
2 to speak to John Dio. Hellerman is going to be
3 there. Hellerman knows about the market, you don't,
4 and you are just not going to accomplish anything."
5

6 He said, "Don't worry, we are dealing with
7 John, we will accomplish it."
8

9 Q Mr. Alpert, was Mr. Gugliaro able to get
10 back to you soon in connection with this problem that
11 you had told him about?
12

13 A He had a meeting subsequently with John
14 Dio.
15

16 MR. NEWMAN: Objection, if your Honor please,
17 unless we establish that this gentleman was there.
18

19 THE COURT: Yes. I will sustain the
20 objection unless -- did Mr. Gugliaro tell you this?
21

22 THE WITNESS: Yes.
23

24 THE COURT: All right. When?
25

THE WITNESS: After the meeting with Dio.

THE COURT: And where did he tell you this?

THE WITNESS: At the Potpourri restaurant.

THE COURT: And who was present?

THE WITNESS: Myself, Weiss, Bonadanna, Layne
and Gugliaro.

Q Mr. Alpert, did there come a time when Mr. Taylor

1 MISS NEIMAN: It is as good as any time,
2
3 yes, your Honor.

4 THE COURT: Mr. Foreman, ladies and gentlemen
5 of the jury, suppose you be excused now for our luncheon
6 recess and we will resume at 2 o'clock. Thank you
7 very much.

8 (The jury left the courtroom.)

9 THE COURT: Mr. Alpert, you may be excused
10 until 2 o'clock.

11 (The witness left the courtroom.)

12 THE COURT: Mr. Newman, you had some applica-
13 tion or applications you wanted to make.

14 MR. NEWMAN: Yes.

15 I wanted to move for the withdrawal of a juror
16 and a declaration of a mistrial based on the testimony
17 or the answer given by the FBI agent, Judge, in which,
18 in response to a perfectly simple question as to "What
19 do you do for the FBI?" him saying, "I'm in the
20 Criminal Division," and at this point we had the picture
21 in, your Honor had given what your Honor considered a cau-
22 tionary instruction. I respectfully suggest to your
23 Honor that this washed away the effects of that caution-
24 ary instruction, not through any fault of your Honor or
25 Miss Neiman, but it didn't come out.

I didn't want to highlight it at the time. I respectfully submit that we now have the picture of Mr. Cugliaro being named in an indictment in Imperial, this gentleman here, Mr. Alpert, has testified in greater detail for Imperial than he ever did before at the trial that he testified in, we have the pictures in now, albeit your Honor's cautionary instruction, and we have the statement by the FBI agent that he is in the Criminal Division and that he took material from the pocket or the possession of Mr. Cugliaro.

I respectfully submit I don't know how I can try this case without putting Mr. Cugliaro on the stand and without this jury drawing the inference that he was indicted, having up in the air the idea that he may have been convicted of a crime, and that he was searched incidental to some arrest, and we have those pictures.

I say, Judge, it has created a maze and a web that I don't really think we can hide our heads in the sand and say can be cured, no matter how well intentioned your Honor is, by any cautionary instruction and I reluctantly and respectfully move for the withdrawal of a juror.

THE COURT: I think I will deny that applica-

1 kp3 Alpert-direct

2 trip from anybody?

3 A Yes.

4 Q From whom?

5 A Michael Hellerman.

6 Q And have you had a conversation with anyone else
7 about your getting that money?

8 A Yes. Mr. Weiss and myself both conferred with
9 Vinnie Gugliaro about the fact that we would need the money
10 to go down to Houston, and it was okay, and we received some
11 money when we left and the rest was wired down to us.

12 Q Did there come a time some time after your trip
13 to Houston, Texas, that you spoke to Mr. Gugliaro again
14 about the money that you had been given to go down to Texas?

15 A This was a few weeks after we had returned.

16 Q And where was that conversation?

17 A At The Potpourri. A call was placed to Houston
18 by Erwin Layne and spoke to a man called J.L. Patterson,
19 and the call was placed to Patterson by Layne asking Patterson
20 if --

21 MR. NEWMAN: I am going to object to this con-
22 versation, Judge.

23 Q Was Mr. Gugliaro there, Mr. Alpert?

24 A Yes.

25 THE COURT: When the telephone call was made?

1 kp4

Alpert-direct

2 THE WITNESS: Yes, sir.

3 THE COURT: All right.

4 A It was in the office downstairs at The Potpourri,
5 and Layne called Houston to find out where the moneys had
6 gone. Weiss and myself had told them that we paid off
7 brokers with the money, and we hadn't -- we just split the
8 money up and kept it ourselves, and Layne called Patterson
9 for verification on this.

10 Q And did you say anything after the phone con-
11 versation to people who were present with you?

12 A Yes. I said that Patterson wasn't telling the
13 truth, we did pay off the brokers, and that's it.

14 Q And that fact was not correct, was it?

15 A No.

16 THE COURT: Who made the trip to Houston?

17 THE WITNESS: Mr. Weiss and myself.

18 Q Mr. Alpert, did there come a time when you went
19 on vacation during the month of December, 1969?

20 A Yes. I left for Florida with my family, I believe,
21 on the 19th of December.

22 Q And did you come back to New York at all during
23 your vacation?

24 A Yes, for one day towards the end of the month.

25 Q And were you in Mr. Murray Taylor's office at

1 kp5

Alpert-direct

2 all that day?

3 A Yes.

4 Q And do you recall who else was at Mr. Taylor's
5 office?

6 A Mr. Hellerman, Mr. Weiss, myself, Mr. Bonadonna
7 and Mr. Layne.

8 Q Mr. Alpert, did you ever have any conversation
9 with Mr. Gugliaro or were you ever present during any con-
10 versation where a phone call was discussed with Mr. Gugliaro
11 present only -- not if anybody else was present when he was
12 not present?

13 A Was I physically present at a meeting or had a
14 discussion?

15 Q Yes, where Mr. Gugliaro was there in connection
16 with a phone conversation.

17 A No.

18 Q Did there come a time when you had a conversation
19 with Mr. Vincent Gugliaro on the potential profits from
20 Imperial?

21 A Yes.

22 Q And approximately when was this?

23 A It was the first or second week in January of
24 1970.

25 Q And where did this conversation take place?

A-35

1 kp6 Alpert-direct

2 A At The Potpourri.

3 Q And who was present?

4 A Layne, Philip Bonadonna, Vincent Gugliaro, Mr.
5 Weiss and myself.

6 Q And will you tell us who said what in this con-
7 versation?

8 A I was speaking with Erwin predominantly because
9 Erwin was taking notes so far as the amount of stock that
10 was sold over a period of time from the beginning of the
11 year on. This stock that was sold from the beginning of
12 the year on was going to be divided as soon as the settle-
13 ment date came through between the two parties involved --
14 Hellerman and us.

15 Erwin had notes as to how many shares were sold,
16 and the figure -- the dollar figure which was proposed at
17 that time I think was about \$140,000 of securities which
18 had been sold and bought, and we wanted to divide that
19 \$140,000 up.

20 Q And did you have a conversation with -- this is
21 the conversation that you were relating with Mr. Gugliaro
22 and all the others were present, is that correct?

23 A Yes.

24 Q Did you ask to go to any meeting in connection
25 with the profits of Imperial?

1
2 A No.

3 Q Now, going back to that meeting and the people
4 who you mentioned were there, had you ever met Phil
5 Bonadonna before this meeting?

6 A No, ma'am.

7 Q Had you ever met Erwin Layne before this meeting?

8 A No, ma'am.

9 Q Had you ever met Vincent Aloï before this meeting?

10 A Yes, ma'am.

11 Q Will you tell us, indicating who said what, what
12 was said at that meeting?

13 A Well, we sat down for lunch, we were along a
14 banquet in Gatsby's, and Mr. Dioguardi was sitting at the
15 head of the table, sort of at the head, and Mr. Gugliaro and Mr.
16 Aloï were sitting on the right of him down, like, in the
17 middle of the table, and Mr. Dioguardi, addressing himself
18 to me, although he had told me what his conversation
19 at a previous meeting was, said to the table and directing
20 primarily his conversation to Mr. Vincent Aloï and
21 Mr. Vincent Gugliaro, he said, "I had Michael come back from
22 Puerto Rico," and he stopped and he said, "Jack," to
23 Jack Kelsey, who was sitting at my left, "if I say anything
24 that wasn't discussed at the last meeting, will you please
25 interrupt me and stop me and correct me because

A-37

1 9tbr 15

Hellerman-direct

2 that is why I had you at the last meeting."

3 Mr. Dioguardi went on to say there was a meeting
4 and that Mr. Taylor, Murray Taylor, had met Mr. Erwin
5 Layne and Phil Bonadonna and Mr. Murray Taylor had said to
6 Erwin Layne and Phil Bonadonna that he, Murray Taylor,
7 was Johnny Dio's partner and Johnny wanted the record to be
8 shown and he said that Murray Taylor was not his partner,
9 that I was his partner and that Murray Taylor shouldn't have
10 said that Johnny was his partner but because I was involved
11 with Murray and Johnny was my partner that he had gone
12 to the first meeting and he wanted everybody to understand
13 his relationship to the deal, that he wasn't Murray Taylor's
14 partner, that he was my partner.

15 He went on to say that at the previous meeting
16 there was a discussion of front --

17 MR. NEWMAN: I am sorry, Judge, I assume he still
18 means Mr. Dioguardi.

19 THE WITNESS: Yes, right.

20 THE COURT: I think you are right.

21 MR. NEWMAN: Because he had a whole bunch of
22 people.

23 THE WITNESS: Mr. Dioguardi is doing all the talking
24 now.

25 MR. NEWMAN: I am sorry, Mr. Hellerman.

A-33

1
2 A Mr. Dioguardi is saying at the first meeting
3 there was a discussion of front money and that there was a
4 discussion of Ronnie Alpert needing front money to be
5 able to sell the Imperial Investment stock and he explained
6 that Mr. Alpert, that he was told from Mr. Aloï and Mr.
7 Gugliaro and Mr. Bonadonna, Mr. Layne, that Ronnie Alpert
8 had a mutual fund in Texas and that at \$24 a share he could
9 sell the whole block of 111,000 shares that I had said
10 was outstanding at that price and they wanted -- "they"
11 meaning Mr. Gugliaro, Mr. Aloï and Ronnie Alpert's side
12 wanted \$400,000 for making the transaction or selling the
13 block of stock to the mutual fund and they wanted front
14 money.

15 The front money started out being asked at
16 100,000, then 25,000. And he asked Jack Kelsey during this
17 conversation -- this is Mr. Dioguardi -- "Jack, is what I
18 am saying correct?"

19 Jack nodded his head, Murray Taylor modded his head
20 and I interrupted at that point and I said, "John," referring
21 to Mr. Dioguardi now, "naturally, you didn't agree to any
22 front money."

23 Johnny said, "No, I didn't."

24 I said, "Well, I don't believe that Ronnie Alpert
25 can do the deal, because those kind of deals are impossible.

2 Those are dream deals, they don't happen."

3 He said, "I will tell you what you do. Ronnie
4 Alpert doesn't need the front money and doesn't have to
5 make the price of the stock 24 or \$26 and sell it to a mutual
6 fund."

7 I said, "I will do that." I said, "You take --
8 you get Mr. Aloï's word and Mr. Gugliaro's word right now
9 and they can make the difference, John. I will deliver
10 to you 111,000 shares of Imperial Investment, you deliver
11 it to Mr. Aloï and Mr. Gugliaro and let them give you
12 \$2 million for the stock and they don't have to make
13 400,000, they can make 600,000 or they can make 800,000,
14 because I will take the stock to 28 or 30 or 26. That is not
15 the problem. Ronnie Alpert can't do the deal and he is just
16 looking to take down front money. It cannot be done the
17 way he is saying. So if they believe, Mr. Gugliaro and Mr.
18 Aloï believe that Ronnie Alpert can do the deal, then
19 just take their word, John, and I will make the stock 28 or 26
20 or 30, whatever price they want, and I will hand them the
21 stock and you get their word that you will get \$2 million."

22 At this point Mr. Aloï looked at Mr. Gugliaro and
23 they got a little nervous, they didn't know what to say
24 next, and then Mr. Bonadonna and Mr. Layne interrupted and
25 said, "Why don't we give them a chance?"

I said, "John, if you want to give them a chance out of your friendship for Mr. Gugliaro and Mr. Aloï, that is all right, but there is not going to be any front money here and I just don't believe it can be done."

That was the basic conversation.

MR. NEWMAN: At a convenient time to the Court in the absence of the jury, I have certain applications to address.

THE COURT: Yes. I will consider them in a few minutes. It is almost time to stop.

All right, go ahead, Miss Neiman.

Q Mr. Hellerman, in the course of the conversation, did Mr. Dioguardi say anything about who was present at the prior meeting which he was telling you about?

A Yes, ma'am.

Q And what did he say?

A Mr. Dioguardi at the beginning of the conversation, when he addressed himself to the whole table and explained that he had asked me to come back from Puerto Rico and he said at the previous meeting Mr. Aloï was supposed to be at the meeting and that is why he had brought Mr. Tramunti to the meeting, but Mr. Aloï didn't come to the first meeting but now everything that was being done was known both by Mr. Tramunti and by Mr. Aloï.

2 THE COURT: Now, do I understand, Mr. Hellerman,
3 that the deal was being discussed at New Gatsby's Restaurant
4 at this meeting about which you just testified involved
5 the stock of Imperial Investment Company?

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. We have time for about one
8 more question.

9 Q Mr. Hellerman, had you ever met Ronnie Alpert or
10 Bernie Weiss before this meeting at Gatsby's?

11 A No, ma'am.

12 THE COURT: All right. Suppose we stop now.
13 It is 4:30.

14 I have told the jury that we would stop at
15 4:30.

16 Mr. Foreman, ladies and gentlemen of the jury,
17 bear in mind not to discuss the case amongst yourselves or
18 with anybody else.

19 We will excuse you until 9:30 tomorrow morning
20 and we will try to start promptly at 9:30. Thank you
21 very much. You are retired.

22 (The jury left the courtroom.)

23 THE COURT: All right, Mr. Hellerman, you may be
24 excused until 9:30 tomorrow morning.

25 Marshal, you can arrange now in any way you see

1 gtbr 20

2 fit for Mr. Hellerman to leave the room.

3 THE WITNESS: Thank you, your Honor.

4 THE COURT: I wonder if it isn't perhaps more
5 prudent to wait a few minutes and let the jurors leave
6 the floor. Do you think?

7 THE MARSHAL: Yes, your Honor.

8 THE COURT: Then why don't you sit back in the back
9 of the room or wherever it is convenient. Let us give
10 the jurors time to leave the floor.

11 MR. NEWMAN: Thank you, sir.

12 THE COURT: All right, Mr. Newman.

13 MR. NEWMAN: I have alternative requests for
14 relief, Judge.

15 I would respectfully --

16 THE COURT: Would you rather do this out of the hear-
17 ing of the witness?

18 MR. NEWMAN: Yes, I would.

19 THE COURT: Why don't you come up here.

20 (At the side bar.)

21 MR. NEWMAN: Based on his testimony, Judge, I
22 respectfully request in the alternative a mistrial on the
23 theory that the collateral estoppel motion that I made really
24 had no bearing after Mr. Hellerman's testimony, because I think
25 he testified to the entire Imperial conspiracy either

1 tp2

Hellerman-direct

2 Q Mr. Hellerman, did Mr. Alpert and Mr. Weiss ever
3 attend these meetings at Gatsby's?

4 A No, ma'am.

5 Q And why was that?

6 A Mr. Dioguardi --

7 MR. NEWMAN: I am going to object to that.

8 THE COURT: Sustained.

9 By the way, do we need to get into all the
10 details of the conversations at these various meetings?

11 Isn't the government's purpose to prove that
12 the defendant knew these persons and discussed Imperial
13 stock with them?

14 MISS NEIMAN: Yes, your Honor, and I will try
15 to shorten the conversation.

16 THE COURT: Let us not ask him what was the
17 conversation. You can ask him, "Did you discuss Imperial
18 stock," or something else.

19 MISS NEIMAN: Very well, your Honor, I will do
20 that.

21 THE COURT: I don't think we need the details.

22 Q Mr. Hellerman, did you ever hear Mr. Gugliaro
23 mention a restaurant in Brooklyn where he would meet Mr.
24 Alpert or Mr. Weiss?

25 A Yes, ma'am.

A-44

2 spoke to him.

3 MISS HEIMAN: I have no further questions.

4 THE COURT: All right, Mr. Foreman and
5 ladies and gentlemen of the jury, suppose we take a
6 few minutes' recess while I take up some questions of law
7 with counsel. You may retire to the jury room.

8 (The jury left the courtroom.)

9 THE COURT: All right, Mr. Hellerman, we will
10 excuse you for a few minutes and you can wait outside.

11 (The witness left the courtroom.)

12 THE COURT: Now, Mr. Newman, I made a note
13 that you wanted to make an application.

14 MR. NEWMAN: Judge, I move again in the al-
15 ternative for either a mistrial or that your Honor
16 instruct this jury that Mr. Gugliaro has been twice acquitted
17 of his involvement in Imperial, and I respectfully call
18 your Honor's attention to the fact that these questions
19 as posed by Miss Heiman, and I think your Honor picked it
20 up somewhere along the line, were designed and in fact
21 resulted in Mr. Hellerman recounting into everything
22 about the Imperial situation, including conversations
23 in great detail between himself and Alpert and everything
24 else that had to do with Imperial, and I don't see,
25 despite your Honor's good intention and your Honor's

A-45

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admonition at the beginning, if you do it again in the
middle and if you do it again, most respectfully, at the
end, that they disregard Imperial, I say to you in the
posture of the cases, in the posture of the questions pro-
pounded by the government and the answers elicited from
this witness, the government can't have the best of both
worlds. They have dragged Imperial right through
this trial and I think this jury should be advised that
Mr. Gugliaro was twice acquitted, otherwise he is on trial
for a third time in Imperial.

THE COURT: Mr. Newman, Imperial, though is
relevant to many of the counts in the indictment.
For instance, one of the counts I just happen to remember,
charges an offense because Mr. Gugliaro testified that
he never discussed Imperial with, and theoretically all
discussions could certainly come in. I thought we
had had enough and therefore I suggested that we did
not need every word that was said. If it was a dis-
cussion of Imperial that makes the government's point just
about as well as the actual words that were used.

Upon further reflection I cannot accept your
point about the acquittal of Mr. Gugliaro and I deny
this application.

I am going to give as strong an instruction

as I can that he isn't being charged with stock manipulation or any form of securities and that whether he was guilty or innocent in the Imperial offenses is totally irrelevant to the charges here and that the jury should disregard it entirely and not speculate as to the result of that trial.

MR. NEWMAN: If your Honor please --

THE COURT: Now, suppose though I were to adopt your reasoning and either permit you to bring it out or I were to instruct the jury that Mr. Gugliaro had been acquitted. How could I stop Miss Weiman from arguing and asking the jury to accept that of course he was acquitted, because he perjured himself.

MR. NEWMAN: Fine, I don't care.

THE COURT: I know. But whether the alleged false testimony had any effect at all is not an essential element of the offense and it is totally irrelevant.

MR. NEWMAN: Yes, but you see, Judge, we are in a different posture here by virtue of the collateral estoppel notion because the government has already taken a position in memoranda and in affidavit that as a matter of law his testimony at that trial did not influence the verdict because, Judge, they can't say

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it influenced the verdict. The minute they do they
then put your Honor on the horns of a dilemma where
your Honor must seriously consider by collateral estoppel
motion so they have to take the position which they
have already taken.

A-48

1 cpl

Hellerman-croce

3B

2 THE COURT: Certainly I am not going to find
3 collateral estoppel with a verdict that was brought about
4 by false testimony and in that way the man would escape
5 punishment altogether. We would never have a system of
6 justice. That is totally unreasonable.

7 No, I am convinced that what I believe to be
8 the correct rule found in a number of cases is that the
9 result of the first trial is utterly irrelevant. I believe
10 it is a good rule and I think, among other reasons,
11 because otherwise you and Miss Neiman would be arguing
12 about the affect of th acquittal at the first trial on
13 the guilt or innocence of the man giving false testimony
14 and the way to keep out those irrelevant matters is
15 just to rule, as I do rule, that the guilt or innocence,
16 conviction or acquittal, of this defendant at the Imperial
17 trials has no bearing on the issues here.

18 MR. NEWMAN: Except, Judge, all of that is
19 wonderful in theory -- and I don't mean it is wonderful
20 in theory, it is erroneous in theory -- but in practice,
21 as it was practiced in this case, that was far from the
22 situation because I think, to use street vernacular,
23 Mr. Gugliare got the short end of the stick because
24 witness after witness was asked questions a certain way
25 to elicit every one of the gory details involving con-

1 op2

Hellerman-cross

2 versations, not only involving Mr. Gugliaro, but conver-
3 sations involving Hellerman and Alpert when Gugliaro wasn't
4 even there. I say they can't have it both ways.

5 That is all right, if we are dealing in a
6 vacuum, but we are not dealing in a vacuum.

7 THE COURT: I think generally when Mr.
8 Gugliaro was not there, I don't think I permitted the
9 details of the conversations, at least on some occasions
10 I certainly sustained your objections.

11 But when he is there, the government is proving
12 that he discussed Imperial with these people.

13 MR. NEWMAN: Judge, I didn't want to be placed
14 in the position of jumping up every three minutes to object
15 to conversations because I didn't want to attach that
16 great a significance to it, but I would venture to say
17 to your Honor, if we were to just look at the transcript
18 of Mr. Hellerman's testimony this morning, there was
19 conversation after conversation that didn't in any way
20 relate to Mr. Gugliaro's involvement in Imperial.

21 For example, Mr. Gugliaro is alleged to be
22 at a table, Judge. Let's concede for the moment just
23 for the purposes of this argument that the issue is Mr.
24 Gugliaro's involvement in Imperial vis-a-vis the perjury
25 where he denied his involvement.

A-48b

2 THE COURT: Mr. Clerk, will you give this
3 to the marshal to give to the jury and mark the note
4 the next court's exhibit.

5 (Court's Exhibit 1 marked.)

6 MR. NEWMAN: When you have a free moment
7 from your calendar there is something which has come to
8 my attention in connection with our case and I would
9 like to put on the record.

10 THE COURT: Do it right now.

11 MR. NEWMAN: I happened to be sitting
12 across the hall while Mr. Weiss is testifying in another
13 case and the government just now across the hall
14 produced a memorandum from the Federal Bureau of
15 Investigation indicating that Mr. Weiss became a coopera-
16 tive witness with the government in February of 1971
17 and there is a whole memorandum and interview report which
18 was just handed up which greatly varies from his
19 testimony here of starting to cooperate in October of 1972
20 and which raises another problem, Judge.

21 You may remember that a piece of testimony was
22 allowed into evidence concerning a conversation that
23 he, Weiss, had with my client at the time of the Imperial
24 trial in December of '71 concerning what my client said,
25 in words or substance, he, Weiss, claims that if any wit-

2 nesses are produced who saw him in the Potpourri, he is
3 going to say it was the Chez Joey.

4 Now, I asked for a side bar at that time and
5 I raised the possibility that it was an invasion of
6 the defense and Miss Neiman, and I am certain in good
7 faith, assured this court that he did not start cooperat-
8 ing until October of '72, but now just right across the
9 hall Mr. Higgins just gave out his 3500 material, a report
10 indicating a whole report by Weiss as an informant as of
11 February 1, '71. I think it requires the attention
12 of this court at a convenient time to see that report,
13 most respectfully, Judge.

14 THE COURT: You certainly have a right to
15 raise this question at any time, but for all I know at
16 this time it may be academic.

17 MR. NEWMAN: It could be. I am just calling
18 it to the court's attention as soon as I found it
19 out.

20 MISS NEIMAN: I will be glad to respond.

21 THE COURT: I think a response at a later
22 time, because there is very little I can do at this
23 point.

24 MISS NEIMAN: I just wish to advise the
25 court that one of the documents that I turned over to your

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2 Honor for your Honor to look at was a memorandum indi- 848
3 cating that Mr. Weiss was, to Judge Lasker, indicating
4 that Mr. Weiss was an FBI informant in February of 1971
5 and he was not cooperating and was never a witness;
6 in fact, was indicted, went to trial and was indicted two
7 more times. And therefore I think the point Mr. Newman
8 makes is not relevant at all to these proceedings.

9 MR. NEWMAN: I don't want to thrash it out
10 now.

11 THE COURT: I thought I was ruling on whether
12 this material was a statement of the witness relating to
13 his direct examination under 3500.

14 MISS NEIMAN: Your Honor, when I handed
15 the material up to the court I advised your Honor that
16 I did not think it was producible under either 3500
17 or Brady. Your Honor made the ruling that you were
18 making your ruling on 3500.

19 I stand by my decision that it was not Brady
20 material.

21 MR. NEWMAN: I think there is another
22 facet.

23 THE COURT: Nothing I sa now is intended
24 to prejudice either side. I just cannot determine the
25 matter now, but both of you have leave to go into it at

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any time when it becomes necessary.

MISS NEIMAN: Thank you, your Honor.

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2 directly or through the mouths of other co-conspira-
3 tors, the pretext being Mr. Gugliaro was at the table,
4 but he started all the way back from the letter A and
5 came out -- I didn't want to interrupt it because
6 I didn't want to attach any undue significance to it, but
7 and testified, in my recollection, within five minutes to
8 the entire conspiracy.

9 My client was acquitted of this conspiracy
10 and if collateral estoppel is to have any meaning at
11 all I think it has meaning vis-a-vis this gentleman,
12 and I would submit to your Honor, at the risk of in-
13 jecting character into this, it does not involve
14 Miss Weiman, but this gentleman is so worldly vis-a-vis
15 testifying in courts he has more stand time than
16 perhaps some of us, and I would submit to your Honor that
17 it was done deliberately by him because I have seen him
18 testify before, and I submit I should have one of two
19 things, either a mistrial or, in the alternative, I don't
20 see why I should not be allowed to bring out of this
21 witness that DioGuardi was acquitted -- I know what I am
22 saying, Judge -- Tramunti was acquitted, Alois was
23 acquitted and my client was acquitted of that Imperial
24 conspiracy, Judge, because I am trying the Imperial
25 conspiracy again, Judge.

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2 THE COURT: I don't think that we are and
3 I am not going to change my ruling. I deny the motion
4 for a mistrial.

5 I am still considering the question whether
6 to tell the jury myself that the defendant here was
7 acquitted, because I am going to tell them that we are
8 not trying the Imperial conspiracy, it makes no differ-
9 ence whether he was acquitted or convicted; we are only
10 trying whether he testified falsely. But I haven't
11 overlooked the fact that you want the jury to be
12 made aware that he was acquitted. I am going to tell
13 them in the same breath that it is completely irrele-
14 vant.

15 MR. NEWMAN: That's fine. That's fine.

16 MISS NEWMAN: Your Honor, before you make
17 that decision, will I be given an opportunity to be
18 heard?

19 THE COURT: Yes. But we don't have to do
20 it before we finish with this witness.

21 Anything else?

22 MR. NEWMAN: No.

23 I just wanted to ask you, by way of instruc-
24 tion on cross examination, whether you will land on
25 me like a ton of bricks if I try to ask him whether he

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2 knows whether John Dioguardi was acquitted in
3 Imperial.

4 MISS NEIMAN: No.

5 MR. NEWMAN: I am asking the judge this, Miss
6 Neiman.

7 THE COURT: No, I won't permit that.

8 MR. NEWMAN: Okay.

9 THE COURT: But I will let you ask me
10 to tell them that John Dioguardi was acquitted. It
11 will have the same effect.

12 MISS NEIMAN: In front of the jury? Are you
13 ruling on that that he is permitted to --

14 THE COURT: No, not yet. Not yet.

15 MR. NEWMAN: Thank you, sir.

16 THE COURT: Miss Neiman, I think you ought
17 to consider your position on this. If there should be
18 a conviction of this defendant you know what they will
19 do upstairs, and from my standpoint it strikes me it is
20 much more prudent regardless of the technicalities of the
21 earlier cases to tell the jury that this man was
22 acquired.

23 MISS NEIMAN: Your Honor, believe me, I have
24 had several conferences with the chief appellate attorney
25 and the head of the Criminal Division with respect to

A-55

this problem and we have come to the view, based on the prior law, it is either what it says or it isn't.

And if it is impossible to determine what the jury decided then there is no reason for the acquittal to come in. Otherwise collateral estoppel would not mean anything.

THE COURT: But --

MISS NEIMAN: Mr. Newman only wants to use it to show the jury believed Mr. Gugliaro --

MR. NEWMAN: I won't say a word about it.

THE COURT: I won't permit that.

MISS NEIMAN: Also the jury decided something that was relevant and the very fact that the judge says they should disregard it, why should they know about it if they must assume they didn't mean anything?

THE COURT: Because I think myself, with my experience in all these matters, I would conclude that this defendant had been acquitted at the prior trial myself, or otherwise I would reason the government wouldn't be prosecuting him right now.

I think it is arguable that the jury, with considerably less experience than I have with these matters, might conclude that he had been convicted, and that is something, since we know it isn't the fact, they ought not to be able to hold against him.

MISS NEIMAN: Your Honor, the government's position on that is, one, a curing instruction from the court ought to suffice.

THE COURT: What curing instruction can I give except that he wasn't convicted?

MISS NEIMAN: Simply they are not to speculate what happened at the prior trial one way or the other. Indeed, they might think there were three trials the way Mr. Newman has been going asking Mr. Albert questions and there was no result from any of them the way it stands now.

THE COURT: In case of doubt it is better to err on the side of the defendant in a criminal case. You know that familiar principle.

MISS NEIMAN: I do, your Honor. That's why I propose that Mr. Gugliaro was simply a witness who testified and the jury not know he was a defendant.

THE COURT: Yes, but I am not touching any indictments. That's out.

We don't need to do anything more at the moment, but as I say, I still have under advisement --

MR. NEWMAN: I just wanted to amplify it. I think the mention of names such as Aloi, who is a constant publicity name in the context here, and Tramanti

and the context that they were mentioned, and I will direct your Honor's attention to it when we have the minutes tomorrow, to look at the way Mr. Hellerman put it in to bring the overtone of respect and relation and the involvement in it were done for no other reason than for Mr. Hellerman on a proven formula to impress the jury allegedly with Mr. Gugliaro's relationship to Alois, Tramunti and Dioguardi, Judge, and I ask you to read that carefully. That is another string on the question of a mistrial, Judge.

THE COURT: No. I heard him testify and I don't think that calls for any action by me at the present time.

I also checked the indictment and such a meeting is relevant, because his acquaintance with Dioguardi and his acquaintance with Hellerman --

MR. NEWMAN: I was not disputing --

MISS NEWMAN: The first question of the indictment was "Did you speak to Alois or Tramunti?"

MR. NEWMAN: I didn't go into the question of relevancy at the moment.

THE COURT: I don't think we need to discuss it any further. I think I have the point.

Anything else? Okay.

(Adjourned to January 16, 1974, at 9:30 a.m.)

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Sanoff-direct

2 THE COURT: Thank you, Mrs. Sanoff. You may be
3 excused.

4 MR. NEWMAN: Judge, one other question. I beg
5 your pardon.

6 THE COURT: Yes.

7 BY MR. NEWMAN:

8 Q Do you remember the approximate month the sign
9 was changed?

10 A To the best that I know, it had to be either
11 late February or March or April.

12 Q Of what year?

13 A 1970. Not 1969.

14 MR. NEWMAN: Thank you.

15 THE COURT: Anything else, Miss Neiman?

16 MISS NEIMAN: Of this witness, no, your Honor.

17 THE COURT: All right.

18 (Witness excused.)

19 MISS NEIMAN: The government calls Miss Lucille
20 Cicalo.

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Cicalo-cross

2 A Yes.

3 Q Mrs. Cicalo, will you keep your voice up so that
4 this lady and myself can hear you, please.5 Mrs. Cicalo, I ask you to take a look at
6 Defendant's G in evidence, this picture.7 Is that a fair and accurate reproduction of the
8 front of this club where you worked?

9 A Yes.

10 Q Now, this club that you worked at, was that
11 located at 5221 Foster Avenue in Brooklyn?

12 A Yes.

13 Q Now, you told us on direct examination that
14 you believe it was the end of January or February, 1970,
15 that the sign was changed. Do you remember that?

16 A Yeah.

17 Q Now, I show you H for identification.

18 By the way, do you know whether it was Sign
19 World, Incorporated, that changed the sign?

20 A No.

21 Q I show you Defendant's H for identification,
22 and ask you whether this refreshes your recollection
23 as to who changed the sign and the date that it was
24 changed on, February 27, 1970? Does that refresh your
25 recollection?

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2 (In open court; jury present.)

3 THE COURT: Miss Neiman, will you address the
4 jury.

5 MISS NEIMAN: Thank you, your Honor.

6 Your Honor, Mr. Newman, Mr. Lustig, Mr. Foreman,
7 Ladies and Gentlemen of the jury.

8 I, too, thank you, as Mr. Newman did, for the
9 attention you have given this case even though it is a
10 short one.

11 What I am going to discuss with you is the
12 evidence, and the main thing I am going to discuss with
13 you is how the evidence was corroborated and also whether
14 or not the witnesses which the government put on the stand
15 have any motive to lie at this stage of the game.

16 I hope that you will decide this case on the
17 basis of the facts and the evidence and your common sense
18 and not on the amount of name-calling that has been done,
19 not on which lawyer calls the witnesses names, on whether
20 or not the witness has been called a con man once, twice
21 or twenty times or how loudly the witness has been yelled
22 out, but, again, the only issue here is the evidence
23 and whether you believe the evidence is credible.

24 We are going to get to motive and credibility
25 in a few minutes, but for the moment let's deal with a

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2 few things Mr. Newman mentioned as red herrings and what
3 he claims the government should have done and didn't do
4 in the prosecution. Let us first focus on the following
5 thing:

6
7 For the witnesses who testified, the jig was
8 up a long time ago. They were caught, they were prosecuted;
9 some of them went to trial and were prosecuted and were
10 found guilty and then they pled guilty to other cases,
11 some of them pled guilty to all the indictments against
12 them and didn't go to trial. At this point in time,
13 they have no motive whatsoever to lie. It makes no
14 difference to them at all. Indeed, their motive is the
15 opposite; if they are caught lying they will be indicted
16 for perjury. You even heard Mr. Hellerman say because of
17 all the crimes that he committed, if he is caught committing
18 any crime, a swindle, a con game or one single lie, the
19 government can go back and prosecute him for everything
20 he has ever done. That is his understanding with the
21 government. So Mr. Hellerman has no motive to lie.
22 That is the worst thing he could possibly do at this stage
23 of the game.

24 Let's look at one other thing:

25 If you remember in his opening statement, Mr.
Newman mentioned that you should very carefully look at

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2 the demeanor of the witness, that when they testify on
3 direct examination you hear the answers come right out
4 one after another as if rehearsed as a play, that if you
5 look at the witnesses on cross-examination they will not
6 be as good, that they would not answer the question,
7 that they would fudge.

8
9 I suggest that you will find that that is not
10 true at all, that you have before you three individuals
11 who are very open, very truthful, who admitted what they
12 did in the past, who admitted being liars, who admitted
13 being con men, who admitted that, yes, as part of their
14 motivation to testify they wanted to minimize or limit
15 their exposure to jail. They didn't lie to you about
16 that. They put the cards right on the table. They
17 didn't have any difficulty in remembering anything, not
18 on cross, not on direct, not at any point during the
19 course of this trial.

20 The very thing I am going to point out which
21 is going to be a theme throughout this summation is the
22 fact that these witnesses were corroborated by other
23 evidence and by other witnesses; other evidence and
24 other witnesses which Mr. Newman calls in lawyer's language
25 red herrings, in other words, they are really meaningless,
but you will notice that everytime the government used

corroborating evidence, it has to become meaningless. You have to get rid of it, you have to make believe it doesn't exist so that the only thing you have left are the con men and swindlers, or else you have a very nice young lady like Lucille Cicale, whom you can't call a con man or a swindler, you can only call an honest waitress who said she saw Vincent Gugliaro at the restaurant in September of 1969 through May of 1970, when she stopped working there, two Friday nights a month. That is two times nine is eighteen times. But you have to get rid of that, either get rid of it by calling the Restaurant Chez Joey and charge Mr. Gugliaro made a mistake, or by saying that the witnesses said certain things which they didn't say, and we will get to that in a few minutes.

Let us also talk a little bit before we get into the evidence about uncalled witnesses.

His Honor will instruct you, I believe, that you may draw the inference, if neither side calls a witness which is available to both sides, if either side does not call that witness, you may draw an inference that that witness may testify unfavorably to either side or no inference at all.

In other words, if the government did not call Murray Taylor as a witness and Jack Kelsey as a witness,

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2 you may find that Jack Kelsey or Murray Taylor may have
3 testified not in favor of them.

4 Similarly, you may find if Mr. Newman didn't
5 call them, they would not testify very favorably to Mr.
6 Gugliaro.

7 You may also forget about the whole thing and
8 just say, "They were not here and we are not going to
9 consider it at all."

10 You also know that the government does not have
11 to call cumulative witnesses. The government does not
12 have to put one witness on the stand one after another
13 to say the same thing, and I suggest you can find -- and
14 Mr. Newman is the one who brought out Murray Taylor and
15 Jack Kelsey were government witnesses at the Imperial
16 trial -- I suggest that you draw the inference against
17 Mr. Gugliaro, his failure to call Murray Taylor, his
18 failure to call Jack Kelsey to lead you to believe if
19 they were called as witnesses they would not say Mr.
20 Gugliaro was not where the other witnesses claimed he
21 was.

22 So uncalled witnesses. Why didn't the govern-
23 ment bring a waiter from Gatsby's? A waiter surely
24 could have identified Michael Hellerman who was there
25 forty times. Shirley Siroff, who came into the Pot-

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2 pourri, was recognized and was known to the other two
3 waitresses and she introduced Mr. Gugliaro to them,
4 which is why she was able to identify him.

5 Do you really think the government could call
6 a waiter in here from Gatsby's and ask him four years ago
7 if he recognized Mr. Gugliaro from sitting at a table?

8 Did Mr. Gugliaro call a waiter in to say he was
9 not at a table?

10 The defense has the same subpoena power as
11 the government.

12 Where was Mr. Bonadonna? Why didn't he come
13 here and testify that none of this happened, that it was
14 all a lie?

15 Where was Shirley Siroff, who was at The Pot-
16 pourri and Chez Joey, which we will get to later? Why
17 didn't she come in and say, no, the sign wasn't The
18 Potpourri and, "We never saw Mr. Alport or Mr. Weiss"?

19 Again, let's talk about the credibility of
20 the government's witnesses. And I remind you now about
21 the corroboration, and we will get to it at the end of
22 this discussion.

23 A piece of paper, "Bernie's place." I'm
24 not quite sure whether the defense is conceding that
25 Mr. Gugliaro was up at the cabine or not or whether he

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2 saw Mr. Weiss there and introduced him to Mr. Litvack or
3 not, but it doesn't matter. Certainly, it doesn't look so
4 good, this saying "Bernie's place" when it really should
5 say Phil or Erwin's, because Mr. Gugliaro's claim is
6 Phil and Erwin were the people he was friendly with and
7 not Mr. Weiss, because you recall Mr. Weiss, he only
8 brought lamps from Mr. Weiss's store and that's it, he
9 went there and picked the lamps up and that was the end of
10 it, he never had any deals with Mr. Weiss, never saw Mr.
11 Weiss at The Potpourri.

2 This says "Bernie's place." Underneath that
13 it says "Dave" and Mr. Litvack's phone number. I suggest
14 that this was probably the occasion when Mr. Gugliaro
15 borrowed the key from Mr. Weiss to go up to the cabins
16 because he didn't have Mr. Weiss's phone number here.
17 You might recall Mr. Newman questioning Mr. Litvack
18 whether the cabins had telephone numbers and he said yes,
19 and this is his number. I would suggest that you might
20 find this was the occasion when Mr. Gugliaro went up
21 there on his own when he borrowed the key, not when he
22 was up there two weeks during the summer and everybody
23 was there.

24 It is now suggested it says "Bernie's place"
25 and not Phil's and Erwin's because Lanai at one point

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2 owned the cabins. That is to get rid of this piece of
3 evidence to make believe it doesn't exist.

4 Mr. Livack's testimony is that Mr. Weiss, not
5 Mr. Layne or Mr. Bonadonna, who he said had cabins up
6 there, but it was Mr. Weiss who introduced him to Vinnie.

7 The phone calls from Taylor's office. Mr.
8 Layne, the testimony is, called -- had an argument with
9 Mr. Gugliaro in a car going back from Brooklyn and Mr.
10 Gugliaro yelled at him for using the phone and calling
11 him from Taylor's office and Mr. Weiss was present and
12 testified to that argument.

13 When they got to Brooklyn, in The Potpourri,
14 Ronnis Alpert said -- he was not there when the conver-
15 sation took place, he spoke to Mr. Weiss and to Mr.
16 Bonadonna, who told him that Gugliaro was angry at Layne
17 and he, in fact, saw Gugliaro and Layne sitting at the
18 table and talking.

19 But the phone call is supposed to be meaning-
20 less. Well, Mr. Layne just happened to be in Mr. Taylor's
21 office and happened to be calling Mr. Gugliaro at his
22 place of business.

23 Mr. Alpert, Mr. Hellerman and Mr. Weiss are
24 by no means models of virtue. The government told you
25 that in its opening statement. The government brought out

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2 their criminal conduct in its direct examination. Their
3 conduct was rotten. Their conduct was disgusting. They
4 committed frauds on the public.
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6 But the United States Attorney's Office doesn't
7 run a popularity contest to find its witnesses. The
8 government takes its witnesses as they are. As I said
9 in my opening, and I repeat, if we could bring rabbis and
10 priests and girl scouts to come in here and testify to
11 these kinds of activities, we would do it. If we could
12 bring in people that you could all admire and all look
13 up to, we would do it. But who do you expect to be able
14 to testify to activities like this? The Hellermans and
15 the Alperfs and the Weisses.

16 (If you accept Mr. Newman's proposition, it means
17 that no criminal can ever be convicted of a crime because
18 you shouldn't listen to the witnesses that get up there
19 and talk about it, the other people who know what the
20 otherperson is doing. Who else is going to testify to
21 it?

22 Wouldn't the government have been happy if
23 Lucy Cicalo could say while she was waiting on Mr.
24 Gugliaro the coffee spilled and she overheard a conver-
25 sation about Imperial. Wouldn't that solve all our
problems?

But that's not the way the world is. The

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2 only people who can testify to these meetings are the people
3 who are there and the people who are there are all
4 crooks. The only question now is, do you believe them
5 when they tell you what happened, what they did, what
6 Mr. Gugliaro did, that they met him, that they knew him,
7 that they had meetings with him? Is there any point at
8 this stage of the game for them to lie about these meet-
9 ings?

10 And don't forget that these people were good
11 enough when they dealt with Mr. Gugliaro to deal with him.
12 It's just now that they are on the witness stand testi-
13 fying against him that they are no good, they are con men,
14 they are swindlers. Before that they weren't con men
15 or swindlers.

16 I also draw to your attention the fact that
17 these witnesses were not cross-examined very much, if at
18 all, about the facts of this case. Mr. Hallerman wasn't
19 asked about the details of the meetings at Gatsby's,
20 because you don't want to draw attention to that in the
21 defense case. He was cross-examined about the stock
22 manipulations, he was cross-examined about the fact that
23 he was a con man over and over and over again.

24 He told you over and over again that he had
25 lied, that he had been a swindler, that he had been a

crook. He was not asked about the meetings at Gatsby's.

And let's look at some of the attempts to impeach the witness. Now, the word impeach means to try to show that a witness is not telling the truth. That's a kind of broad definition.

You remember that Mr. Neuman from time to time would read from a prior transcript of testimony of each of these witnesses at a prior trial to attempt to show that something the witness said on the stand here in court in front of you was different from something that he said before and that, therefore, the witness is a liar.

I suggest to you that these attempts by Mr. Newman all failed. They all failed and they were desperate attempts to try to bring things in out of context from prior trials to show that these witnesses were lying here and that every one of these things was explained to you, and I will go through just a few of them to show you that the defense has to distract attention from the facts of this case and make you think only of the fact that these people were involved in stock swindles to try to make you think that they were lying about something and try to pull things out of a prior trial and make it a lie and it wasn't at all. Let's look at some of these.

Let's take Mr. Alpert. Mr. Alpert testified that

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2 at the restaurant and I believe, and it's your recollection,
3 again, that controls, he testified that Mr. Gugliaro and
4 everybody else was at the restaurant when the phone call
5 was made. He didn't add that at the end, because there
6 was an objection because he didn't know whether he said
7 Mr. Gugliaro was there and then he said to the Court in
8 response to the question, "Yes, Mr. Gugliaro was there."

9 He didn't stick it in to please me or to please
10 the government. He's finished with the government. He
11 served his 45 days. He's finished. Now all he has to do
12 is to testify. If he perjures himself, he's in trouble,
13 that's it.

14 Mr. Alpert testified that Mr. Layne placed a
15 phone call to Mr. Patterson. You even heard from Mr.
16 Hellerman later say at Gatsby's that, "Mr. Gugliaro and
17 Layne and Bonadonna were at a meeting and they told me,
18 they put on record with Johnny Dio the fact that Ronnie
19 Alpert and Dennis Weiss might have stolen the money down
20 in Texas, they knew that because they placed a call to
21 Patterson in Texas and Layne had prior contact with
22 Patterson because he had been down in Texas on several
23 occasions."

24 How did Hellerman know that? He wasn't at the
25 meeting at the Potpourri with Weiss or Layne, Alpert or

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2 Bonadonna. He hasn't seen these people since the Fall of
3 1971.

4 Mr. Alpert tells you the phone call was made
5 and then he's asked a question, "Who made the phone call?"

6 And he said, "Mr. Layne made the phone call,"
7 and he doesn't know if the phone call was placed by Mr.
8 Layne and then Mr. Patterson called back on the phone call
9 went through the first time and they talked on the phone.
10 And what's the difference?

11 Mr. Newman is suggesting to you that Mr. Alpert
12 is trying to save the government from subpoenaing, from
13 having it in front of the jury that there were no toll
14 slips here and if this had been from Mr. Alpert's restaurant
15 down to Texas there would be a toll slip. If the call was
16 made from Texas, there has to be a toll slip the other way,
17 too. Mr. Alpert knows that. If there is a toll slip from
18 New York to Texas, there is a toll slip from Texas to New
19 York. The subpoena power of the court extends down
20 Texas.

21 I hope Mr. Newman didn't think we had to bring
22 every toll slip into the courtroom. It would take a couple
23 of weeks to go through it. But he tried to impress on you
24 the fact that Mr. Alpert lied because on the other trial
25 he said Mr. Layne made a phone call. It is not incor-

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sistent at all. It is a desperate attempt to find an inconsistency.

The second thing, Triumph Pet Food and China Noodle, which Mr. Newman believes is funny. Mr. Alpert was asked on cross-examination by Mr. Newman, "Were you ever involved in Triumph Pet Food and China Noodle?" He said yes.

He was then asked if he manipulated the stock, and he said no, and then he answered there never was a stock, there was never any underwriting, there was never any stock to manipulate.

Then Mr. Newman reads to you on cross-examination from a prior trial a whole long conversation, "Did you have a conversation with Portney about China Noodle," and Mr. Alpert says yes. Where is the inconsistency? He said there was no manipulation because there was never any stock. But he accused him in a very loud voice about lying about that, because making it makes it into a lie, apparently.

What about discussing business with his wife? Mr. Alpert told you that before he decided to cooperate with the government he sat down with his wife and he talked to her about all the problems and about all the cases and about what the facts of life were.

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And then Mr. Newman brings in a discussion from a prior trial and Mr. Alpert was being asked in context about whether or not at the time, while he was manipulating a stock, when he used his wife's name, did he discuss it with her, and his answer was "Of course not." Where is the inconsistency in that? It is perfectly consistent.

What about Mr. Hellerman? You saw here lying to Mr. Hellerman called a liar and then you were expected to believe Mr. Hellerman, when he is asked, "Do you know Philip Bono," really is irrelevant to this trial. Mr. Hellerman is sitting there and he is thinking and he scratches his head and he says no, and he is even mumbling to himself while Mr. Newman is thinking of the next question, then you hear the inconsistency from the other trial, "Mr. Hellerman, do you know Richard Bono?"

Mr. Hellerman looks up and said, "Yes, but you asked me Philip."

Is that what this case is about? Trying to find two different words in hundreds of different pages of testimony, is that what the case is about?

Mr. Hellerman, Mr. Alpert and Mr. Weiss hadn't seen each other for ages. Mr. Weiss and Mr. Alpert last spoke in the beginning of May of 1972. They had both been convicted in Imperial, they both had pending indictments

and they spoke before Mr. Alpert became a government witness and Mr. Weiss didn't begin to cooperate with the government until months afterwards. Mr. Hallerman has never seen either of them since September of 1971.

I suggest to you that that is very important, and that is very important because if you look at the testimony in this trial and the facts you have two sides of the story. You have Alpert and Weiss telling you what went on at the table at The Potpourri and you have Mr. Hallerman telling you what went on at Gatsby's, and if the two sides never talked to each other, there is no way that they can be lying if they are telling you things that fit in to a puzzle, and that is exactly what went on in this trial. They never spoke to each other. There is no way that they could have come up with the same story without telling the truth.

Mr. Newman suggests that they sat in on a prior trial. Well, you heard who testified in those prior trials and you will note from the indictment that Mr. Bonadonna and Mr. Layne and Mr. Weiss and Mr. Alpert and Mr. Gugliuzza were all defendants in the prior trial, so there was nobody testifying to the meetings at The Potpourri at the prior trial.

Murray Taylor testified, as you heard, as a

1 tp18

2 government witness, but he wasn't at any of these meetings. 796
3 He was at the very first one when the whole thing started,
4 but he wasn't at any other ones, so they didn't each sit
5 down and memorize Murray Taylor's story so that two years
6 later when they became government witnesses they would be
7 able to recite it from the witness stand.
8

9 Not only would that be incredible, but they
10 didn't do it because Murray Taylor wasn't at the meeting
11 that they testified about.

12 Now let's look at some of the facts in the
13 case and how the pieces fit together with a puzzle, which,
14 again, the facts are not important, it is whether Mr.
15 Hellerman, Mr. Alpert and Mr. Weiss met Mr. Gugliaro.

16 He denied knowing Hellerman and meeting Hellerman,
17 he denied knowing Taylor and meeting Taylor, he denied
18 knowing Hellerman and meeting Hellerman. He admitted knowing
19 Weiss from purchasing lamps, but otherwise denied knowing
20 Weiss. The details of the conversation fit in from
21 one meeting to the next and there is no way that they could
22 fit in unless these people were telling the truth.

23 Let us start at the beginning.

24 You will recall that Mr. Hellerman told you that
25 he had been involved in Imperial, but then he decided he made
enough money and he was going to stop. He then went down

2 to Puerto Rico for a couple of days.

3 You have the records in evidence showing that a
4 Michael Hellerman stayed in Puerto Rico from November 3rd,
5 4th and 5th at the Dorado Beach Hotel.

6 If there was another Michael Hellerman, you
7 can be sure Mr. Newman would have found the other Michael
8 Hellerman, but, again, I don't think that is very important.

9 While Mr. Hellerman was down in Puerto Rico,
10 towards the end of October, Murray Taylor, Levine and
11 Goodman went to The Potpourri to offer a proposition to
12 Alpert and Weiss, "Will you come in and join us in the
13 Imperial stock manipulation?"

14 And Phil Bonadonna, a very good friend of
15 Gugliaro, a friend for 20 years -- you heard what he
16 testified to -- was sitting at that table, and Mr. Alpert
17 didn't want to do the deal because there was no front
18 money, he wanted to make sure he would get some money
19 in advance so he wouldn't be out of pocket and end up with
20 nothing.

21 But Mr. Bonadonna heard from Mr. Taylor -- and
22 this is important -- that John Dioguardo was Mr. Taylor's
23 partner and Bonadonna said to Alpert and Weiss, "Don't
24 mix the deal yet, I can talk to John Dioguardo, wait before
25 you make a decision."

1
2 Over the next few days Mr. Alperthad several
3 conversations with Mr. Bonadonna and Mr. Taylor and he
4 agreed to do the deal.

5 You heard from Mr. Hellerman what happened during
6 the new few days, although Mr. Hellerman was in Puerto Rico,
7 because when he came back he had a meeting at Gatsby's, which
8 was the second meeting, the first for Mr. Hellerman was the
9 second meeting, and you heard there had been a first meeting
10 that Mr. Bonadonna and Mr. Gugliaro and Mr. Dioguardo and
11 Mr. Layna and Mr. Tramunti and Mr. Kelsey in Mr. Hellerman's
12 absence sat down and talked about having Ronnie Alpert
13 try to push the stock up and sell it to some mutual fund
14 in Texas.

15 And what is important about this?

16 Mr. Hellerman tells you about the Gatsby's meeting
17 and about John Dioguardo telling everybody present that
18 Murray Taylor told the people in Brooklyn that, "I was his
19 partner, but I want to straighten that out, that's not
20 true."

21 That's just what you heard from Mr. Alpert and
22 Mr. Weiss, that Murray Taylor told everybody that John
23 Dioguardo was his partner.

24 It couldn't have happened -- they can't be telling
25 the truth unless they were both at these different meetings.

1 tp21

2 and remember they never spoke to each other, and everything
3 fits in, because that was the way it was.

4 So while Mr. Hellerman is in Puerto Rico,
5 there was a Gatsby's meeting and the deal is talked about,
6 but then Mr. Hellerman comes back and Mr. Dioguardo wants
7 him at the meeting, and there is a second meeting with
8 Mr. Alci, who was not at the first meeting, although it
9 was supposed to be, according to the testimony, Mr.
10 Gugliaro, Mr. Hellerman, Mr. Dioguardo, Mr. Taylor, Mr.
11 Layne and Mr. Bonadonna. Hellerman tells them the deal
12 is almost impossible, Ronnie Alpert can't do it, but in
13 the end they decide to give Ronnie Alpert a try.

14 Shortly after that Alpert and Wales begin
15 manipulating the stock.

16 And then you hear about the \$25,000 and you also
17 hear that from all the witnesses in the trial. Mr.
18 Alpert said that he had spoken to Taylor and Hellerman
19 about the \$25,000 and that they said they couldn't do
20 it. Mr. Alpert then goes to Mr. Gugliaro and asks him,
21 "Please try to get me an advance of \$25,000 or a loan."

22 Mr. Gugliaro goes to Gatsby's, sits down with
23 John Dioguardo and Michael Hellerman and Murray Taylor
24 and he is told by John Dioguardo -- he is asked, "Can
25 you guarantee it?"

He says, "No."

John Dioguardo says to Hellerman, "Well, I wouldn't loan him the money if I were you."

Then Gugliaro and Hellerman go back to Teller's office and meet with Alpert, and Alpert and Hellerman both testify to this conversation, where Hellerman said, and Gugliaro explained what had happened at the meeting, John Dioguardo wouldn't okay the loan unless Gugliaro guaranteed it. But then Hellerman said, "If you put in 10,000 shares of buying into the stock, I'll loan you the money."

And, in fact, Alpert does that and the money is loaned.

What does that lead to? The next part of the puzzle, the confirmations are stolen from Murray Taylor's office. Mr. Weiss tells you about that and Mr. Gugliaro -- and Mr. Alpert tells you about that, a conversation about that, and Mr. Hellerman tells you about that, that is, a conversation in Gatsby's with Mr. Dioguardo, Mr. Alodi and Mr. Gugliaro about the confirmations stolen from Murray Keller's office.

Mr. Alpert then tells you that they had to go down to Texas and they needed money and they talked to Mr. Gugliaro about getting money. What does Mr. Hellerman

1
2 tell you? That he had a meeting at Gatsby's with John
3 Dioguardo and Vincent Gugliaro, they needed money for
4 Texas.

5
6 Then what happens? Mr. Alpert tells you that
7 Lane and Bonadonna and Gugliaro were suspicious about what
8 he and Weiss had done with the money in Texas and they
9 placed a call to J.L. Patterson down in Texas to find out
10 what happened to the money, and Mr. Alpert told you that
11 Mr. Patterson apparently advised everybody that it was
12 true, Alpert and Weiss had not used the money to pay off
13 brokers, that they had kept the money, and Alpert told
14 everybody no, it's not true, Patterson is lying.

15 Then what do you hear? You hear from Hellerman
16 that Vincent Gugliaro went to Gatsby's to tell John Di-
17 guardo, with Mr. Layne, "We think Alpert and Weiss stole
18 the money and we want you to know, we don't want to hide
19 anything from you."

20 And Layne says, "We called somebody in Texas
21 named Patterson and we think they kept the money."

22 There was no way, no way they could make up a
23 story like that.

24 The same thing with the conversation about the
25 phone call, which we went into before. There are two
phone calls, one on December 22nd, which was read into the

1 tp25

2 either declare -- give them a name in which Murray Taylor
3 could declare \$10,000 in taxes or else take \$10,000 out of
4 the twenty. Mr. Gugliaro took the \$10,000.

5 And remember Mr. Alpert had a conversation
6 with Mr. Gugliaro before this in which he says, "We think
7 Murray Taylor wants to have his taxes taken off. Don't
8 do it. You are crazy to do it."

9 Mr. Gugliaro did it, and again Ronnie Alpert
10 blew a gut because what did he get out of this, \$2000,
11 and that was the end of it for him.

12 And another thing Mr. Newman mentions about
13 inconsistencies which does not give very well with the
14 theory that the government witnesses got their stories
15 together because they wanted to lie. Mr. Weiss recalls
16 that Mr. Gugliaro was not outside on Park Avenue and he
17 just met in the back of Mr. Layne's basement. Mr. Alpert
18 recalls that Mr. Gugliaro was there.

19 It doesn't much make a difference, but if they
20 wanted to lie, they would have gotten together and given
21 you the same story, and the same thing with the splitting
22 up of the money in the basement. If they wanted to lie
23 they would have gotten together and given you the same
24 story. And I suggest that either their recollections
25 differ and one of them is right, not that they are lying.

1
2 but just that one of them is right and one of them is wrong
3 or mistaken, or even furthermore that Mr. Alpert left
4 the meeting, have gotten his share, and Mr. Weiss remained
5 with the others and then learned of the actual split
6 that Mr. Guglierc was going to make of the money and that
7 it was just not going to be split among himself, Bonadonna
8 and Layne but among himself, Bonadonna and Layne and 26th
9 Street.

10 You will recall that Mr. Alpert testified simply
11 to his knowledge that was the way the money was split,
12 he didn't testify he was there and saw them dividing up
13 the other \$5000.
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2 You will also recall that Mr. Weiss told you --
3 Mr. Alpert told you he was finished, he was through,
4 he was furious. Mr. Weiss told you he kept on talking
5 to Mr. Gugliaro at the Potpourri and asked him to
6 check the figures with Hellerman and Dioguardi, because
7 he felt they had been robbed. And you will recall what
8 Mr. Hellerman told you; he had a meeting where John
9 Dioguardi sent him to Gatsby's with Murray Taylor and
10 they sat and he went over the figures.

11 Again, Mr. Newman suggested that the standard
12 that you use is whether you would buy a used car from Mr.
13 Hellerman, Mr. Alpert or Mr. Weiss. They are not
14 selling used cars. The question is whether you are
15 going to believe what they tell you that they did
16 several years ago, together with Mr. Gugliaro, not
17 whether you are going to buy a used car from them.

18 Again, I remind you of their motive to tell the
19 truth and the fact that their story rings true. That's
20 what your common sense is used for in the jury room.
21 Did this thing happen or did these people make it up out
22 of thin air? As Mr. Newman said, did they just stick
23 Mr. Gugliarin there as John Jones, out of the clear, blue
24 sky? Why? What is their beef against Vincent
25 Gugliaro? What is the government's beef against Vin-

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2 cent Gugliaro? Why make up a story?

3 Let's look at some of the corroborating evi-
4 dence. We have talked about the telephone call from
5 Mr. Taylor's office to Mrs Gugliaro's, not
6 made by Mr. Taylor, made by Mr. Layne.

7 Let's talk about the Chez Joey for a moment.

8 Here I would like to go over the testimony with
9 you of some of the witnesses, including Mr. Alpert
10 and Mr. Weiss, and again your recollection controls, but
11 with all due respect to Mr. Newman I don't think that
12 he accurately portrayed to you the testimony of Mr.
13 Alpert and Mr. Weiss.

14 Mr. Weiss said the Potpourri opened somewhere
15 in the summer of 1969 or the late spring of 1969,
16 and he said to you that they applied for a liquor license
17 right away and they did everything that was necessary,
18 but he told you that the sign did not go up saying Potpourri
19 until after Labor Day. He didn't say that the sign
20 went up in the summer and that they applied for the
21 liquor license in the name of Potpourri. He said
22 no such thing. He said that the sign went up somewhere
23 after Labor day of 1969. That puts it somewhere at
24 the end of September of 1969.

25 Mr. Alpert, when he was asked about the

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1 application, which he was not shown but he was asked about
2 it, was right on point. He said, "I think we applied
3 in June of 1969 in the name of Alto Corporation," which
4 is right what it says on this exhibit, Defendant's
5 Exhibit I, "and that we opened sometime in September of
6 1969, and we had the Chez Joey sign up for about two
7 weeks and then we put the Potpourri sign up."

8 They didn't tell you that it was opened up in
9 June of 1969 with the Potpourri sign. That's not what
10 they said.

11 More important -- incidentally, this picture
12 was taken May 24, 1969, submitted with the application
13 in June of 1969 and the date is right on here.

14 What is interesting about the picture is
15 look at the sign, Chez Joey, it is very big. And I
16 suggest to you in a minute when we go and narrow the
17 sign when the Potpourri sign went up, that Mr. Gugliaro,
18 when he was in there, couldn't have missed it, although
19 I also suggest to you that he knew where the Potpourri
20 was, he knew what he was testifying about in 1971.

21 MR. NEWMAN: Judge, I am constrained, I
22 think we are getting close to the government putting
23 its integrity at issue, he knew --

24 MISS NEWMAN: Preceded, I suggest to you,

1 I believe --

2 THE COURT: You mean that Miss Neiman is put-
3 ting her person belief --

4 MR. NEWMAN: Yes.

5 THE COURT: I don't think she means to.

6 Do you, Miss Neiman?

7 MISS NEIMAN: I certainly don't. I wasn't
8 there.

9 MR. NEWMAN: I am sorry to interrupt.

10 THE COURT: That is all right. She is mak-
11 ing an argument. Be sure to make that clear, Miss
12 Neiman.

13 MISS NEIMAN: Yes, your Honor.

14 I was not there, neither was Mr. Newman.
15 Anything that I say to you is based on the argument and
16 based on the evidence and the testimony in this case and
17 nothing that I believe.

18 When this sign went up, you can be sure that Mr.
19 Gugliaro saw the sign Potpourri. It is rather large.

20 Now let's go back to the dates.

21 The witnesses who took the stand, the hat-check
22 girl and the waitress, differed from Mr. Alpert and Mr.
23 Weiss as to when the sign went up. Alpert and Weiss
24 said they believed Labor Day; these witnesses, one of
25

1 then, Mrs. Sicallo, said end of January, beginning of
2 February; Mrs. Sanoff, hat-check girl, said February or
3 March.
4

5 Regardless of when the sign went up, in
6 February, Mrs. Sicallo told you that Vincent Gugliaro went
7 to that restaurant two Friday nights a month from September
8 to May of 1970, from September, 1969 through May of 1970,
9 which is when she stopped working there. That
10 leaves, even assuming the sign went up in February,
11 March, April and May.

12 Again, I suggest to you, where is Shirley Saroff
13 to tell you she was never in the Potpourri with Vincent
14 Gugliaro?

15 In addition to which there were witnesses, Mr.
16 Taylor and Mr. Levine, at the prior trial who, either in
17 questions or in response to questions, indicated the
18 restaurant that was being talked about at the prior trial
19 by the name of the Potpourri was on Foster Avenue and Kings
20 Highway.

21 Again, although I suggest to you that you
22 believe the testimony of Mr. Alpert or Mr. Weiss it doesn't
23 matter whether this was Chez Joey or Potpourri, that
24 if Mr. Gugliaro lied about not dealing with Mr. Weiss,
25 about not knowing Mr. Alpert, he was obviously lying when

1 he said he never went to the Potpourri, that the
2 application for renewal, which has to be submitted every
3 year for wine license, 1970 and 1971, which was filed
4 on January 14, 1970 with the name Potpourri, means
5 that the sign went up, even by Mr. Newman's own calcu-
6 lations, before this application was submitted, so the
7 sign was clearly up there before January 14, 1970, which
8 makes it January, February, March, April, May.

9
10 Again, in conclusion, I am not going to
11 repeat the counts of the indictment, I think you know
12 what they are. You know that Mr. Gugliaro denied
13 ever meeting Bonnie Alpert and he denied ever meeting
14 Murray Taylor and he denied ever meeting Michael Heller-
15 man, that he denied discussing the Imperial Investment
16 Corporation stock with Carmine Tramunti, John Dioguardi,
17 Vincent Aloï, Erwin Layne, Phil Donadonna, that he denied
18 being at Gatsby's where the money was split up and
19 talking about Mr. Taylor's taxes or anything else that
20 went on in that discussion.

21 He admitted knowing Mr. Weiss from the pur-
22 chase of lamps, but denied any other dealings with Mr.
23 Weiss, and said he was never in the Potpourri at all and
24 never saw Mr. Weiss.

25 I suggest to you that if the oath means any-

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2 thing, if the words "Do you swear to tell the truth, the
3 whole truth and nothing but the truth, so help you God,"
4 means anything, I submit to you that you ought to find the
5 defendant Vincent Gugliar guilty of violating that oath
6 on all counts of the indictment.

7 I thank you for your attention.

8 THE COURT: Mr. Foreman and ladies and
9 gentlemen of the jury, I would like to give you my
10 instructions and then have the marshals take you to lunch
11 in a body and then when you come back from lunch in a body
12 you can begin your deliberations.

13 I just want to ask this question: Would any
14 juror feel it better to take a few minutes' break
15 now before I begin my instructions or shall we go right
16 ahead?

17 Who wants a break?

18 All right, Mr. Clerk, would you make the
19 announcement.
20
21
22
23
24
25

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

73 CR 513

VINCENT GUGLIARO,

Defendant.

-----x

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of GUSTAVE H. NEWMAN, and upon the Exhibits and upon the indictment, the undersigned will move before the Hon. Inzer Wyatt, at the Courthouse, Foley Square, New York, New York, on a day and time to be set by the said Judge, for an order granting the following relief:

1. Dismissing the indictment on the grounds that it is barred by the principle of collateral estoppel;

2. Dismissing the indictment on the grounds that it violates due process;

3. For such other and further relief as to the Court may seem just and proper in the premises.

Dated: Brooklyn, New York
August 6, 1973

Yours, etc.
EVSEROFF, NEWMAN & SONENSHINE
Attorneys for Defendant
186 Joralemon Street
Brooklyn, New York 11201

TO: HON. PAUL A. CURRAN
United States Attorney
Southern District

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----x

UNITED STATES OF AMERICA,

-against-

VINCENT GUGLIARO,

Defendant.

Indictment No.
73 CR 513

-----x
STATE OF NEW YORK }
COUNTY OF KINGS } SS:

GUSTAVE H. NEWMAN, being duly sworn, deposes and says: I am associated with EVSEROFF, NEWMAN & SONENSHINE, attorneys for the defendant. In such capacity I am fully familiar with all of the facts and circumstances herein. I make this affidavit in support of the instant motion which seeks dismissal of the indictment.

BACKGROUND

The defendant, VINCENT GUGLIARO, together with 15 other persons was indicted in this Court under Indictment No. 70 CR 967. The Indictment contained 55 Counts of what was commonly came to be called "Stock Fraud". The First count charged a conspiracy and the defendant was named in it. He was also named in a number of the substantive counts. The matter was tried in 1971, concluding in December, 1971, by Judge Lasker and a jury. For ease of reference we will refer to it as the "LASKER TRIAL". Not all of the defendants went to trial at that time, one pled guilty, and then was severed and became a government witness, and defendant Dioguardi and Frank were severed due to illness. The defendant herein, GUGLIARO, did stand trial. He was acquitted of all of the

substantive charges against him and the jury was "hung" on the conspiracy charge. He testified in his own behalf in that trial. The perjury indictment, which is the subject matter of this motion is based upon his testimony at the "LASKER TRIAL".

Thereafter in or about May or June of 1972, the defendant GUGLIARO together with 4 other defendants stood trial under the conspiracy count upon which the jury could not agree in the "LASKER TRIAL". This second trial was held before Judge Pierce of this Court and a jury. Tried together with the defendant GUGLIARO, were two defendants from the "LASKER TRIAL" who were also acquitted of the substantive counts but the jury could not agree on the conspiracy. In addition to them, two other defendants who were severed from the "LASKER TRIAL" due to illness, stood trial with them but upon the entire original indictment; this second trial before Judge Pierce will be referred to as the "PIERCE TRIAL" for ease of reference. The indictment upon which defendant GUGLIARO stood trial at the "PIERCE TRIAL" in so far as it pertains to him is annexed hereto and made a part hereof as EXHIBIT "A". The defendant GUGLIARO did not testify at the "PIERCE TRIAL". He was acquitted by the jury. Thereafter and more particularly in or about June 1, 1973, he was indicted on the current indictment which charges him with 7 Counts of perjury concerning his testimony at the "LASKER TRIAL". He has pled not guilty and the trial is scheduled for November, 1973.

THIS MOTION

This motion is made to dismiss the indictment on the general ground that the prosecution is collaterally estopped from trying this defendant by virtue of the acquittal at the "PIERCE TRIAL".

The current indictment as previously indicated contains 7 Counts of perjury.

The Counts may be summarized generally as follows:

Count 1. Did he talk to any of the people at the defense table including Ronnie Alpert about Imperial Stock.

Count 2. Did he first see government witness Murray Taylor in the court room.

Count 3. Did he have dealings with defendant Bernard Weiss other than in a lamp store.

Count 4. Did he ever see defendant Bernard Weiss or was he ever in Potpourri restaurant in Brooklyn.

Count 5. Did he ever meet one Michael Hellerman.

Count 6. Did he know Ronnie Alpert and did he ever hear anyone refer to Ronnie Alpert before indictment.

Count 7. Did he get \$10,000 from one Michael Hellerman.

At the "PIERCE TRIAL", amongst other witnesses called by the prosecution were former co-defendants, Murray Taylor and Ronnie Alpert. The "PIERCE TRIAL", upon information and belief lasted at least 6 weeks. I am not personally privy to all of the testimony adduced at that trial. I have examined the testimony to the following extent. The direct and cross examination of the witness Ronnie Alpert, and the direct of the witness Murray Taylor. The cost of the balance of the record is prohibitive for this defense to obtain. Upon information and belief I believe that Taylor or Alpert are the key witnesses, if indeed not the only witnesses to testify about any actual involvement by the defendant GUGLIARO.

The case applicable to this motion are set forth in a separate memorandum.

The guiding principle seems to be did the prior trial of necessity ultimately decide the issues sought to be relitigated by the instant indictment. Of course basic to the current perjury indictment is the charge that the true facts are otherwise than the defendant testified in the "LASKER TRIAL". That is in short; as to Count 1: He talked to Alpert and the other defendants about Imperial Stock; as to Count 2: He saw the witness Murray Taylor prior to the Court appearances; as to Count 3: He had dealings with the co-defendant Weiss other than in the lamp store; Count 4: He met the defendant Weiss in the Potpourri Restaurant in Brooklyn; as to Count 5: He met Michael Hellerman; as to Count 6: He knew Ronnie Alpert and he heard people refer to him before the indictment; as to Count 7: He got \$10,000.00 from Michael Hellerman. Examination of the indictment tried in the "PIERCE TRIAL" clearly indicates that the only charge is conspiracy. Implicit in this charge of course is a combination between this defendant and other people. Amongst the people enumerated are Alpert, Taylor, Weiss and Hellerman. Further examination of that document indicates by virtue of the allegations of the means of carrying out the conspiracy and the overt acts alleged, that the 4 aforementioned are the keys to any alleged conspiracy. Therefore their role had to be clearly established and their connection if any to this defendant was vital. Indeed, the means of carrying out the alleged conspiracy set forth in subparagraph r on page 6 of Exhibit "A" allege a splitting up of profits amongst the defendant GUGLIARO and all of the 4 aforementioned co-defendants and others. Implicit in this allegation of course is a meeting between him and others.

Sub-paragraph t on page 7 of Exhibit "A" refers to a meeting between the defendant and 3 others, for the purpose of resolving disputes and to arrange the distribution of profits amongst the other defendants and co-conspirators. Implicit in this allegation is the allegation that this defendant knows all of the other defendants, and co-conspirators and resolves disputes between them and distributes profits amongst them. In addition to this overt act number 6 on page 7 of Exhibit "A" alleges that the defendant was at a certain location. The testimony at the Pierce trial, which will be dealt with later, indicates that there is a restaurant called Gatsby's at that location which was the alleged site of alleged conspiratorial meetings between this defendant and at least Hellerman and Taylor.

Beyond the mere allegations and issues framed by the pleadings; the testimony is even more telling. The government in your deponent's estimation sought to prove this defendant's involvement in the conspiracy, by the testimony of witnesses Taylor and Alpert.

I have taken the liberty of annexing hereto, the portions of the testimony of these witnesses as exhibits. The direct testimony of witness Taylor is annexed as Exhibit "B", the direct of the witness Alpert as Exhibit "C", and the cross of Alpert as Exhibit "D".

Examination of these exhibits indicate that testimony was elicited from these witnesses which specifically involves each

and every count of the instant indictment. The testimony purports to convey the government's contention of the true state of facts as to each charge of perjury in this indictment. The testimony adduced from these two witnesses on the subject are relevant in the Pierce trial to the issues. Indeed beyond the issue of relevancy, I suggest are vital to the government's case in that trial. This may in fact be the only evidence which in any way ties the defendant Gugliaro to the alleged conspiracy. It is the only evidence adduced at that trial to support the government's theory of the case against Gugliaro, that is that he attended meetings to resolve disputes and distributed money. We of course suggest that beyond this testimony profitable recourse might be had to the government's opening, final arguments and perhaps even the Court's instructions to the jury to support our theory.

In order to perhaps save the Court's time I have set forth a schedule of the Counts of the perjury indictment and the exhibit and page number of the testimony which covers it.

(NOTE: WE HAVE OMITTED THE SCHEDULES ATTACHED AS TO ALL COUNTS EXCEPT THE REMAINING COUNT, NAMELY COUNT FOUR.)

COUNT		PAGE
4		4959
	C	4996
	(ALPERT DIRECT)	4997
		4998
		4999
		5013
		5019
		5022
	D	
	(ALPERT CROSS)	5217

An analysis of this testimony clearly indicates that all the counts in the instant indictment were covered by that testimony that the testimony clearly indicates that the true state of facts

were contrary to the testimony of the defendant Gugliaro at the Lasker trial. Moreover the testimony sought to establish that Gugliaro knew the 4 named defendants and co-conspirators and met with them to iron out disputes and distributed money given him by Michael Hellerman. It does not strain the imagination to suggest that the jury verdict of not guilty had to determine vis-a-vis Gugliaro that all of that testimony was not believed and that in effect he had no such involvement. It therefore determined ultimately at least one basic required element of the government's current perjury indictment, that is that the facts that the government says are the true facts and were so known by Gugliaro when he testified were held not to be true by the Pierce trial jury. I submit it goes beyond that and can be said to sustain the Gugliaro testimony at the Lasker trial as true.

I recognize that I have moved basically on the theory of collateral estoppel. I feel however that I am compelled to submit for this Court's consideration the argument that the procedure followed by the government violates this defendant's rights for due process and equal treatment. It is to be remembered that this defendant testified in or about December 1971 in the Lasker trial. He faced a retrial in May 1972, the modified indictment at the Pierce trial could have very well contained Counts of perjury now alleged. The government, it is submitted, wants the best of 2 worlds. They do not want to mention at the Pierce trial the result in the Lasker trial. Thus, they do not include any counts of perjury against the defendant Gugliaro in the modified indictment. However, at the Pierce trial they produce evidence which is identical on both the issues of the stock fraud and the perjury. After the defendant is acquitted

on the stock fraud, then they take the very same evidence submit it to a new jury under the guise of a perjury indictment. In short, they take this defendant before jury after jury until they can obtain a conviction on basically the very same evidence and testimony.

WHEREFORE, it is respectfully prayed that for all of the reasons advanced the indictment be dismissed.

Sworn to before me this
day of August, 1973

GUSTAVE H. NEWMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

v.

No. 73 CR. 513

VINCENT GUGLIARO,

Defendant.

NOTICE OF MOTION

-----x
S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of GUSTAVE H. NEWMAN, and upon the exhibits hereto annexed, the undersigned will move before the HONORABLE INZER B. WYATT, on a date and at a time set by said judge at the Courthouse, Foley Square, New York, New York, for an order pursuant to Rule 33, granting the following relief:

1. Setting aside the verdict hereinbefore rendered, as to Count 4.
2. Ordering a new trial.
3. For such other and further relief as may be just in the premises.

Yours etc.,

GUSTAVE H. NEWMAN
Attorney for Defendant Gugliaro
Office & P.O. Address
522 Fifth Avenue
New York, New York 10036
682 - 4066

TO: HON. PAUL CURRAN
United States Attorney
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007
Attention: Honorable Shirah Neiman
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

v.

No. 73 CR 513

VINCENT GUGLIARO,

ATTORNEY'S AFFIDAVIT

Defendant.

-----x
STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

GUSTAVE H. NEWMAN, being duly sworn, deposes and says:

I am the attorney for the defendant. In such capacity,
I am fully familiar with all the facts and circumstances herein.

I make this affidavit in support of the instant motion
for a new trial.

B A C K G R O U N D

The defendant was indicted in a seven count perjury indictment. He was tried and acquitted of six counts and convicted of the fourth count which reads as follows:

Q. Did you ever see him (Weiss) in
the Potpourri restaurant?

A. No, sir.

Q. Were you ever in that restaurant,
Mr. Gugliaro?

A. No.

During the course of the trial, the said BERNARD WEISS testified as a government witness. Commencing on page 87 of the trial transcript, he testified to a conversation he had with the defendant Gugliaro during the so-called "Imperial I" trial. This

is the trial from which the perjury indictment against Gugliaro emanated. Defense counsel called for a side bar, which was granted, and colloquy ensued, which is contained on pages 88 and 89 of the trial record. The summary of this side bar conversation may be said to consist of a question as to when the witness began cooperating with the government. The prosecutor said she would get to it and it was not relevant to this question. The pages concerning that occurrence, namely pages 87 through and including 90, are hereto annexed and made a part hereof as Exhibit "A" collectively.

The prosecutor went on after the side bar to elicit the alleged conversation between the witness and the defendant Gugliaro during the "Imperial I" trial, relevant to Potpourri Restaurant being called Chez Joey. The material relevant to this is contained on the bottom of page 89 and the top of page 90.

The witness then went on to testify on direct examination; pages 91 and 92, that he began cooperating with the United States Attorney in October of 1972. These pages are hereto annexed and made a part hereof as Exhibit "B" collectively.

On cross-examination, the witness stated he started to discuss cooperation with the government in September of 1972. The relevant question and answer are contained on page 119 of the transcript, which is annexed hereto and made a part hereof as Exhibit "C".

During the jury deliberations, this same witness was testifying in another case across the hall. After his direct testimony and prior to his cross-examination, in that other trial, the prosecutor in that case offered to counsel another piece of

3500 material. The gist of same indicated that the witness had cooperated with government agencies in February of 1971. That is a date prior to the "Imperial I" trial and prior to the time of the aforementioned conversation he testified to with defendant Gugliaro, relevant to Potpourri and Chez Joey. I have not attached that document to this motion, at the request of the prosecutor, but ask the Court to treat it as Exhibit "D" of this motion; and will submit it under separate cover to the Court.

When your deponent became aware of this set of circumstances, he placed it on the record at bar. The Court, in words or substance, indicated it could not do anything about it at that time since the jury was deliberating.

The fact of the witness Weiss' earlier cooperation was made known and was part of the record in the other trial, which is entitled United States v. Gugliamini Etal. The pages of that transcript, relevant to the date of his cooperation, are hereto annexed and made a part hereof as Exhibit "E".

T H I S M O T I O N

This motion is made to set aside the verdict and for a new trial.

The count of the indictment on which the defendant was convicted involves the defendant's testimony concerning his presence in the Potpourri Restaurant and whether he saw the witness Weiss there.

As the transcript indicates, the witness Weiss testified to the defendant's presence at the Potpourri. He also testified to the alleged conversation with the defendant during the "Imperial I" trial, in which the defendant allegedly alluded to

a position he would adopt, if witnesses were produced to contradict his testimony at the "Imperial I" trial. As it turned out, of course, the defendant's position at the trial was that the restaurant was known as the "Chez Joey", not as the Potpourri. Thus, the witness Weiss' testimony forecast the defense and sought to present this as a fabrication in advance of its assertion. As indicated by Exhibit "D", the witness Weiss commenced his cooperation with the F.B.I. in February of 1971, some months before the alleged conversation with Gugliaro during the "Imperial I" trial. The witness was thus a government informant while he sat at the defense table during the self-same trial.

Exhibit "D" indicates that the witness spoke to the F.B.I. on February 1, February 2, February 23, March 1, March 5, May 20, June 11, 1971. Weiss was apparently given an assignment to keep abreast of Alpert's desire to cooperate so that Alpert could be contacted. The assistant who prosecuted the Gugliamini case, to wit: Hon. Walter Higgins, received this report from the F.B.I. on September 23, 1973. It must therefore be presumed that his colleague, the prosecutor at bar, knew, should have known, or had available to her upon inquiry, the self-same information. Although your deponent was not privy to memoranda submitted to Judges Lasker and Stewart on the sentencing of Weiss, a certain remark by the prosecutor indicates that the dates of his earlier cooperation were contained in these memos. Certainly it is beyond controversy that Exhibit "D" is deliverable to the defendant as either 3500 material or under "Brady".

Rule 3500 in its relevant portion reads as follows:

"After a witness called by the United States has testified on direct examination, the Court shall, on motion of the defendant, order the United States to produce any state-

ment (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified; if the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use."

Brady v. Maryland 83 S.Ct. 1194, requires the delivery of material favorable to the defense.

It is also deliverable under the precepts of United States v. Roviato 77 S.Ct. 623. In that case the Court stated at page 628:

"Where the disclosure of an informant's identity or the contents of his communication (emphasis supplied) is relevant and helpful to the defense of an accused or is essential to a fair determination of a cause, the privilege (secrecy) must give way."

(the word "secrecy" is supplied for clarity)

Certainly, it is beyond argument that this document and its contents would have been helpful to the defense. As will be later developed, it presented unlimited opportunities on cross-examination and beyond this, would bolster a contention of the defense that an earlier version of events given by the witness under oath were the truth and not what he testified to at the trial.

In addition to the failure to comply with Rule 3500 and the requirements of Brady v Maryland supra, there were other vices in this procedure. As previously indicated, the prosecution had to know of the earlier date of cooperation; thus, they were obligated to correct the record, so to speak. In United States v. Lusterino 450 F2d 572 (2nd Cir. 1971), the Court reversed a conviction for counterfeiting. The prosecution allowed

a witness who was cooperating with the government prior to his arrest and that of the defendant, to testify as if he were a bona-fide co-defendant. He also was allowed to testify to post-arrest conversations with the defendant including an alleged request by the defendant that the witness take the "weight" and he (the defendant) would support the witness' family. The Court held in reversing, that the prosecution had the true facts, and that although this type of subterfuge might have a place in investigating crime, it had no place in trials.

The Court stated on page 575:

"The prosecutor could not honestly permit Grillo's profession of guilt before the jury to go unchallenged and a verdict to rest upon it."

At bar, the prosecution could not permit Weiss' testimony that his cooperation began in October of 1972 to go unchallenged.

The Lusterino case (Supra) also dealt with the contention that no harm was done by allowing the informant to testify as he did. The prosecution contended it was harmless since Grillo's status as an informant was explored thoroughly on cross-examination. The Court rejected this argument, stating that even if the jury was sufficiently cynical to disbelieve the witness, nevertheless, the jury may (emphasis supplied) have given some weight to the witness' statement of guilt. Thus, the test was what the jury may have done. The Court went on to state on page 575:

"When the prosecution participates in allowing a false picture to be painted, it bears a heavy burden of showing that it could not have affected the verdict. It has not shown that here. A verdict based on such a deception must be set aside."

It is submitted that the prosecution cannot meet the burden at bar, and beyond that, examination of the record at bar clearly indicates that the verdict was affected.

In United States v. Mele 462 Fd 918 (2nd Cir. 1972) a conviction for possession of narcotics was reversed. Madonia was arrested and gave information before the defendant was arrested. He did not testify at the trial about his informer role since that early date. He did testify about his post-arrest contacts with the defendant and his contacts with the defendant continued while both Madonia and Mele were defendants together at the trial. The government submitted 3500 material which did not reveal Madonia's role as an informant on the early date and which did not reveal that Madonia's car had been impounded at an earlier date. A post-trial ordered hearing revealed that the chief prosecutor knew of Madonia's informant status, and even if he did not know that Madonia's car was impounded, the narcotic agents knew this. Thus, the prosecution was held responsible for the knowledge of one other than the actual prosecutor, to wit: the chief prosecutor and the narcotic agents. At bar, the same rule must be applied for the reasons previously given; the knowledge of Assistant United States Attorney Higgins and also the prosecutor at bar was assisted by the F.B.I. in the prosecution of this case.

The Court stated that there must be a reversal even if the prosecution does not solicit the false testimony as long as they do not correct it when it appears.

The Court emphasized that the very least they required of the prosecution was that it completely reveal the true facts to the Court so that a balance of interest could be struck by

the Court; not by one involved in the competitive aspects of prosecution.

In ordering a new trial, Associate Justice Clark, sitting by designation in the Circuit, wrote for a panel consisting of himself, Judge Friendly and Judge Kaufman at page 924:

"Rule 33 does not require a new trial unless the newly discovered evidence will probably result in a different verdict or sentence for the defendant.

Due process, however requires that a different rule be applied when prosecutorial suppression has caused the evidence not to be presented at trial. At least where the suppression is deliberate the defendant need only show that the evidence is material and could in any reasonable likelihood have led to a different result."

The date of cooperation, and the withheld report were in the words of Mele (supra) material at bar, and clearly affected the defense. For example, the alleged conversation forecast the defense and cast suspicion upon it in advance of its submission. However, if the material had been delivered to counsel, it could have been established to the jury that the witness was already an informant at the time of the alleged conversation, yet he made no notes of it, no immediate report of it to the prosecutor, or the F.B.I. The report showed that he cooperated with the F.B.I. re Imperial in June of 1971 to the extent of relaying information concerning another defendant's action to allegedly manufacture a defense. Despite this, no statement concerning the alleged conversations with Gugliaro until after October, 1972 were made, thus leaving it open to the suggestion of recent fabrication. Beyond this, it could have raised a question concerning the prosecution's tactics having an informant Weiss sitting at the defense table in "Imperial I" with the other defendant. It is also to be remembered that Weiss testified

at the "Imperial I" trial in direct contradiction to his testimony at bar. Imagine if the jury was made aware that at the time he gave that testimony, he was a government informant and cooperating with them, they certainly could and probably would, infer that testimony was the truth. Beyond this, the jury could rightfully question the government's good faith in allowing their informant to testify at "Imperial I" without revealing his status and allegedly standing by while they claim he perjured himself at that trial. The possible uses on cross-examination are only limited by the imagination of the affiant. In short, it is submitted that this report was material and could in every likelihood have led to a different result.

The Mele case, (supra) relies on two Supreme Court cases, one of which is Napue v. Illinois 360 U.S. 264, 79 S.Ct. 1173 (1959). In this case, a co-defendant witness denied he received any promise of consideration in exchange for his testimony, the prosecution did nothing to correct this. The Court in reversing stated on page 1177:

"The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend. As stated by the New York Court of Appeals in a case very similar to this one, People v. Savvides, 1 N.Y.2d 554, 557, 154 N.Y.S. 2d 885, 887, 136 N.E.2d 853, 854-855:

'It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way

relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth * * * That the district attorney's silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair.'

Second, we do not believe that the fact that the jury was apprised of other grounds for believing that the witness Hamer may have had an interest in testifying against petitioner turned what was otherwise a tainted trial into a fair one."

The second case relied upon was Giglio v. United States 92 S.Ct. 763. In this case a conviction was reversed where the testifying co-conspirator denied any promise was made to him; later on, an assistant indicated he had made a promise of no prosecution. The Court stated at page 766:

"As long ago as Mooney v. Holohan (citation) this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice ...

"When the 'reliability' of a given witness may well be determinative of guilt or innocence" non-disclosure of evidence affecting credibility falls within this general rule."

The Court went on to cite with approval the standard previously quoted in this affidavit, and taken from Napue v. Illinois (supra) to the effect that if there is any "reasonable likelihood" the judgment of the jury could have been affected, a new trial is required. In this same vein, Brady v. Maryland 83 S.Ct. 1194 held that suppression of material evidence requires a new trial irrespective of the good or bad faith of the prosecution. The withholding of evidence "favorable" to the accused was itself sufficient to amount to denial of due process.

The standards applicable to a motion for a new trial, as stated in the various Supreme Court cases such as Napue, Brady and Giglio, have been relied upon in various cases emanating from our Circuit.

Thus, in Kyle v. United States 297 F2d 507 (1961) in an appeal after a sentence was served, a hearing was ordered to determine whether missing letters were suppressed. The Court cited with approval the previously quoted language from Napue (supra) to wit: a lie is a lie no matter what its subject and if it is relevant in any way, the case must be reversed and not only must the administration of justice be above reproach, but it must be beyond the suspicion of reproach.

In United States v Keogh 391 F2d 138 (1968) a hearing was ordered concerning the withholding of an F.B.I. report and financial evaluation of a government witness. The Court also relied upon previously quoted language of Napue (supra) to the effect that intentional suppression and also "should have known" suppression mandates a new trial. They also restated the Brady (supra) position that good faith or bad faith of the prosecutor is of no moment, but if material is suppressed which is favorable to the accused, either on the issue of guilt or punishment, a new trial is required. The Court indicated a new trial was required even if suppression was not deliberate and no request made, but if hindsight showed the defense could have used the evidence in other than an insignificant way. This test, we submit, has been more than met at bar.

In United States v. Kahn 472 F2d 272 (1973) even though no relief was afforded on the facts of that case, the Court restated the principles of Giglio and Brady. The Court stated that if there is deliberate suppression, relief is required if

what was suppressed was material or favorable to the defense. Even if suppression is unintentional, if the material suppressed has apparent high value, relief is required. The test in both of the foregoing cases is the effect of its suppression on preparation for trial, not its effect on the jury's verdict. Even where the suppression is inadvertent and does not involve obviously high value evidence, the movant need not show probability of a different verdict; merely that there is a significant chance that this added item in the hands of skilled counsel, could have induced a reasonable doubt without intending to evaluate your affiant's ability. It is submitted that the material involved could have evidenced a reasonable doubt at bar.

A most recent case on the subject of suppression is United States v Pacelli which appears in the slip opinion of January 11, 1974 page 1347. The issue was the failure to produce a letter written by a government witness to the prosecutor. The Circuit Court reversed the conviction and remanded the matter for a new trial. The Court did this even after accepting the government's assertion that the non-disclosures were inadvertent; held that a new trial had to be granted. One of the reasons they gave is that the letter involved contained a blatant lie. At bar, the documents suppressed would tend to indicate that the witness' testimony as to the first date of his cooperation was a blatant lie. The decision in Pacelli might be best summed up in the following statement which is applicable at bar:

"Denial of the opportunity to use such forceful impeaching material bearing on the credibility of the government's key witness mandates a new trial."

It is submitted that on every applicable standard, relief is mandated at bar:

a) there was suppression of material known to the United States Attorney's office;

b) whether intentional or not, it is obviously material or of high value since it puts a lie to the prosecution witness on the key date of cooperation;

c) the bad or good faith is immaterial;

d) the material is highly favorable to the defense;

e) it effected the preparation and progress of the defense.

In addition to all of the foregoing, there are other infirmities to what transpired. Since Weiss was an informant prior to the alleged December 1971 conversation with Gugliaro, contrary to the side bar assurance of the prosecutor, the question of infiltration of Gugliaro's defense at the "Imperial I" trial, in violation of the Sixth Amendment, had legal viability.

Further, since the alleged conversation was post the "Imperial I" indictment, and Weiss was a government informant, Massiah v United States 84 S.Ct. 1199 would become operative.

(See also footnote page 574 United States v Lusterino (supra))

Whether we apply the test of

a) Napue, that a lie is a lie and mandates a reversal; or

b) Mele, that the prosecution must correct the record and cannot stand by and profit by it; or

c) Keogh and others, that suppression, either knowingly or on a should have known

basis requires a new trial if merely material or favorable to the defense; or

d) Brady and Rule 3500; or

e) Massiah, post-indictment conversation with a defendant; or

f) Kahn, a significant chance that added item could have produced a reasonable doubt,

a new trial is required at bar.

WHEREFORE, IT IS RESPECTFULLY PRAYED, that the motion be in all respects, granted.

GUSTAVE H. NEWMAN

Sworn to before me this
day of February, 1974.

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

No. 73 CR. 513

VINCENT GUGLIARO

On this 1st day of March, 1974, came the attorney for the government and the defendant appeared in person and by Gustave Newman, Esq.

It is Adjudged that the defendant upon his plea of not guilty, and a finding of guilty by a jury, has been convicted of the offense of after having duly taken an oath that he would testify truly, before a competent tribunal, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.

(Title 18, U.S. Code, Section 1623.)

as charged in count 4, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS; on count 4, pursuant to Title 18, Section 3651, U.S. Code, on condition the defendant be confined in a jail or treatment type institution for THREE (3) MONTHS, the remainder of the sentence of imprisonment is suspended and the defendant is placed on probation for a period of TWO (2) YEARS, subject to the standing probation order of this Court, and fined \$3,000. Defendant is to stand committed until the fine is paid or he is otherwise discharged according to law. Fine is stayed pending appeal. Defendant is continued on bail pending appeal.

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends
commitment to

UNITED STATES DISTRICT JUDGE

Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

v.

No. 73 CR 513

VINCENT GUGLIARO,

NOTICE OF APPEAL

Defendant.
-----X

S I R S :

PLEASE TAKE NOTICE that VINCENT GUGLIARO hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against him by the HON. INZER B. WYATT on March 1, 1974, wherein the defendant was sentenced to three (3) months imprisonment, two (2) years probation and \$3,000 (three-thousand) dollars fine.

Dated: New York, New York
March 1, 1974.

Vincent Gugliaro resides
at: 1657 Ryder Street
Brooklyn, New York

Yours Etc.,

GUSTAVE H. NEWMAN
Attorney for Defendant Gugliaro
Office & P.O. Address
522 Fifth Avenue
New York, New York 10036
682-4066

TO: HON. PAUL J. CURRAN
United States Attorney
Southern District of New York
United States Courthouse
Foley Square
New York, New York

✓

Two (2)
Service of ~~three (3)~~ copies of the within
Appendix is hereby admitted
this *22nd* day of *April*, 1974

.....
Attorney(s) for

